

TITLE 22 EXAMINING BOARDS

PART 3 TEXAS BOARD OF CHIROPRACTIC EXAMINERS

TABLE OF CONTENTS

CHAPTER 71	RULEMAKING	1
▶ RULE §71.1	Definitions.....	2
▶ RULE §71.2	Petition for Adoption of Rules	3
CHAPTER 72	APPLICATIONS AND APPLICANTS.....	5
▶ RULE §72.1	Definitions.....	6
▶ RULE §72.2	Application for License.....	7
▶ RULE §72.3	Qualifications of Applicants	9
▶ RULE §72.4	Impaired Licensees and Applicants.....	11
▶ RULE §72.5	Approved Chiropractic Schools and Colleges	12
▶ RULE §72.6	Time, Place, and Scope of Examination	13
▶ RULE §72.7	Jurisprudence Examination.....	14
▶ RULE §72.8	Failure to Appear at Jurisprudence Examination.....	15
▶ RULE §72.9	Reexaminations.....	16
▶ RULE §72.10	Disqualification to Take Jurisprudence Examination	17
▶ RULE §72.11	Temporary Faculty License	18
▶ RULE §72.12	Criminal History Evaluation Letters	19
CHAPTER 73	CHIROPRACTIC FACILITIES	21
▶ RULE §73.1	Definitions.....	22
▶ RULE §73.2	Facility Registration Requirements.....	23
▶ RULE §73.3	Annual Renewal of Facility Registrations.....	25
▶ RULE §73.4	Rules of Conduct for Facility Owners.....	27
▶ RULE §73.5	Disciplinary Action for Facility Owners	28
CHAPTER 74	CHIROPRACTIC RADIOLOGIC TECHNOLOGISTS	29
▶ RULE §74.1	Definitions.....	30
▶ RULE §74.2	Registration of Chiropractic Radiologic Technologists	31
CHAPTER 75	LICENSES AND RENEWALS.....	34
▶ RULE §75.1	Notification and Change of Address	35
▶ RULE §75.2	Renewal of Chiropractic License	36
▶ RULE §75.3	Temporary Chiropractic License	41
▶ RULE §75.4	Inactive Chiropractic License Status	43
▶ RULE §75.5	Continuing Education.....	45
▶ RULE §75.6	Failure to Meet Continuing Education Requirements	49
▶ RULE §75.7	Approved Continuing Education Courses	50

▶ RULE §75.8	Exemption from Licensure Fee for Retired Chiropractor Providing Voluntary Charity Care.....	54
CHAPTER 76	LICENSURE OF CERTAIN OUT-OF-STATE APPLICANTS.....	56
▶ RULE §76.1	Requirements for Licensure of Out-Of-State Applicants	57
▶ RULE §76.2	Requirements for Licensure of Military Spouses	59
▶ RULE §76.3	Requirements for Licensure of Military Service Members and Military Veterans	61
CHAPTER 77	PROFESSIONAL CONDUCT	63
▶ RULE §77.1	Definitions.....	64
▶ RULE §77.2	Publicity.....	65
▶ RULE §77.3	Patient's Rights to Disclosure of Charges.....	67
▶ RULE §77.4	Misleading Claims	68
▶ RULE §77.5	Delegation of Authority	69
▶ RULE §77.6	Default on Student Loans and Scholarship Agreements	72
▶ RULE §77.7	Request for Information and Records from Covered Entities	73
▶ RULE §77.8	Records and Documentation	77
▶ RULE §77.9	Out-of-Facility Practice	79
▶ RULE §77.10	Rules to Prevent Fraud.....	80
▶ RULE §77.11	Code of Ethics	81
▶ RULE §77.12	Prepaid Treatment Plans	82
▶ RULE §77.13	Bribery.....	83
▶ RULE §77.14	Coercion of Public Servant or Voter	84
▶ RULE §77.15	Improper Influence	85
▶ RULE §77.16	Tampering With a Witness.....	86
▶ RULE §77.17	Obstruction or Retaliation	87
CHAPTER 78	RULES OF PRACTICE	88
▶ RULE §78.1	Grossly Unprofessional Conduct.....	89
▶ RULE §78.2	Proper Diligence and Efficient Practice of Chiropractic.....	91
▶ RULE §78.3	Individuals with Criminal Backgrounds.....	93
▶ RULE §78.4	Undercover Investigations.....	98
▶ RULE §78.5	Duty to Respond to Complaint and Request for Information or Records	99
▶ RULE §78.6	Required Fees and Charges.....	100
▶ RULE §78.7	Public Interest Information.....	102
▶ RULE §78.8	Complaint Procedures	103
▶ RULE §78.9	Disciplinary Guidelines.....	108
▶ RULE §78.10	Schedule of Sanctions	111
▶ RULE §78.11	Disciplinary Records and Reportable Actions	116

▶ RULE §78.12	Peer Review Committee	119
▶ RULE §78.13	Scope of Practice.....	121
▶ RULE §78.14	Acupuncture.....	127
▶ RULE §78.15	Scope of Prohibitions	129
▶ RULE §78.16	Cease and Desist Orders	131
▶ RULE §78.17	Spinal Screenings	132
CHAPTER 79	SOAH HEARINGS.....	133
▶ RULE §79.1	Definitions.....	134
▶ RULE §79.2	Commencement of Enforcement Proceedings.....	135
▶ RULE §79.3	Denial of Application.....	136
▶ RULE §79.4	SOAH Hearings	137
▶ RULE §79.5	Appearance	138
▶ RULE §79.6	Default Judgment.....	139
▶ RULE §79.7	Depositions, Subpoenas, and Witness Expenses	140
▶ RULE §79.8	Hearing Exhibits and Record	142
▶ RULE §79.9	Proposal for Decision	143
▶ RULE §79.10	Decision of the Board.....	143
▶ RULE §79.11	Extensions of Time	145
CHAPTER 80	GENERAL REGULATORY PROVISIONS.....	146
▶ RULE §80.1	Dual Office Holding	147
▶ RULE §80.2	Merit Selection Principles	148
▶ RULE §80.3	Sick Leave Pool.....	149
▶ RULE §80.4	Private Donors	150
▶ RULE §80.5	Contract Monitoring	151
▶ RULE §80.6	Tuition Reimbursement Payments	152

►RULE §71.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) APA--Administrative Procedure Act, Government Code, Chapter 2001.
- (2) Board--The Texas Board of Chiropractic Examiners.
- (3) Person--An individual, partnership, corporation, association, governmental subdivision, or public or private organization that is not a state agency.
- (4) Rule--A statement by the Texas Board of Chiropractic Examiners of general applicability that:
 - (A) implements, interprets or prescribes law or policy; or describes the procedure or practice requirements of the Board;
 - (B) includes the amendment or repeal of a prior rule; and
 - (C) does not include a statement regarding only the internal management or organization of the Board and not affecting private rights or procedures.

Source Note: The provisions of this §71.1 adopted to be effective January 29, 2015, 40 TexReg 377

►RULE §71.2 Petition for Adoption of Rules

(a) As authorized by the APA, §2001.021(a), an interested person by petition to the Board may request the adoption of a rule.

(b) Form for submission. A person must submit a petition for adoption of rules in writing via mail, fax, e-mail, or hand-delivery to the Executive Director or General Counsel of the Board. The petition shall contain the following information as applicable and except as may be waived by the Executive Director or designee:

(1) the name and contact information of the petitioning party and his or her interest in the adoption of the rule;

(2) a statement of the legal authority and jurisdiction under which the petition is filed;

(3) the exact language of the proposed rule requested to be adopted;

(4) a statement and legal references regarding whether, to the petitioner's knowledge, the requested rule is in conflict with any existing rule, ruling, order or opinion of the Board or any other rules or statutes; and

(5) a statement of the purpose of the requested rule.

(c) Consideration and Disposition. During the sixty (60) day period following receipt of the petition by the Board, the Rules Committee shall meet to consider the petition. Not less than ten (10) days prior to such meeting, the Board shall notify the petitioning party in writing of the date, time and place the petition shall be considered.

(1) At this meeting, the petitioning party may be given an opportunity to present matters to the Rules Committee, at the Committee's discretion.

(2) The Committee, at the conclusion of the meeting, shall decide whether to deny the petition or to recommend to the Board at the next board meeting to publish the requested rule in the Texas Register for comment. If the Committee decides to deny the petition, the Committee shall state its reasons for denial in writing to the petitioning party. A recommendation by the Rules Committee to publish the requested rule for comment shall constitute initiation of rulemaking for purposes of §2001.021(c)(2) of the APA.

(3) At the next board meeting following the Rules Committee meeting, the Board shall consider the Rules Committee's recommendation. The Board shall then decide whether to deny the petition or to publish the requested rule in the Texas Register for comment. If the Board decides to deny the petition, the Board shall state its reasons for denial in writing to the petitioning party.

Source Note: The provisions of this §71.2 adopted to be effective January 29, 2015, 40 TexReg 377; amended to be effective September 13, 2015, 40 TexReg 5784

► RULE §72.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Applicant--An individual who applies for licensure as a chiropractor.
- (2) Board--The Texas Board of Chiropractic Examiners.
- (3) Board member--One of the appointed members of the decision-making body defined in this section as the board.
- (4) Chiropractic Act--Texas Occupations Code Chapter 201.
- (5) Examinee--An applicant who has been approved, admitted to, and/or has taken the examination given by the board.

Source Note: The provisions of this §72.1 adopted to be effective January 29, 2015, 40 TexReg 378

► RULE §72.2 Application for License

(a) All individuals who wish to practice chiropractic in this state, and who are not otherwise licensed under law, must successfully pass an examination given by or at the direction of the board.

(b) An applicant for licensure through examination shall submit to the Board a written application, on a form provided by the Board. The information contained in the application shall be verified by affidavit of the applicant. Along with the application, an applicant shall also submit a fee, as provided by §78.6(a) of this title (relating to Fees and Charges for Public Information). Upon successfully passing the examination, an applicant shall submit a fee for a new license as provided in §78.6(a) of this title. The amount of the fee shall be prorated from the month of examination to the birth month of the applicant.

(c) Applications for examination must be legibly printed in ink or typewritten on the board form, which will be furnished by the board upon request.

(d) Within 30 days of receiving the completed application, required supporting materials, and required fee, the board shall provide to the applicant a notification of the applicant's status regarding their qualification to take the jurisprudence examination.

(e) The filing of an application and tendering of the fee to the board shall not in any way obligate the board to admit the applicant to examination until such applicant has been approved by the board as meeting the statutory requirements for admission to the examination for licensure.

(f) Any person furnishing false information on such application shall be denied the right to take the examination, or if the applicant has been licensed before it is made known to the Board of the falseness of such information, such license shall be subject to suspension, revocation or cancellation in accordance with the Chiropractic Act, Occupations Code §201.501.

(g) Notwithstanding any other law, the Board waives the license application and examination fees paid to the state for an applicant who is a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for a chiropractic license. For purposes of this section, "military service member" means a person who is on active duty and "military veteran" means a person who has served on active duty and was discharged or released from active duty.

(h) Applicants seeking licensure may be refused admission to the practice of chiropractic for certain prohibited acts in accordance with Chiropractic Act, Occupations Code §201.502.

Source Note: The provisions of this §72.2 adopted to be effective January 29, 2015, 40 TexReg 378; amended to be effective November 24, 2015, 40 TexReg 8210

►RULE §72.3 Qualifications of Applicants

(a) All applicants must comply with the application process and license requirements in the Chiropractic Act, Subchapter G of Chapter 201 of the Occupations Code.

(b) The board may deny an application for a chiropractic license if it receives information from an administering entity that the applicant has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial under this subsection upon receipt of information from an administering entity that the applicant whose application was denied is now in good standing. For the purposes of this subsection, "good standing" means that the applicant has:

(1) entered into an agreement with the administering entity to:

(A) repay the student loan;

(B) perform the service obligation; or

(C) pay any damages required by the student loan repayment contract or scholarship contract; or

(2) taken other action resulting in the applicant no longer being in default on the loan or in breach of a repayment or scholarship contract.

(c) For each student admitted a Chiropractic College must document and retain evidence in the student's file regarding the basis upon which the student was judged to be qualified for admission, and clearly inform the student at the time of admission that limitations of practice venue and licensure might occur. Students must demonstrate that qualifications for student acceptance and resultant enrollment are appropriate to the program objectives, goals and educational mission of the program or institution. Each student admitted to begin the study of chiropractic on the basis of academic credentials from institutions within the United States must meet the following requirements:

(1) All applicants must furnish proof of having earned a minimum of 90 semester hour credits of courses at an institution or institutions accredited by a nationally recognized agency not including courses included in a doctor of chiropractic degree program.

(2) All applicants must present proof of graduation from a bona fide Chiropractic College that is accredited by chiropractic educational accrediting body that is a member of the Councils on Chiropractic Education International.

Source Note: The provisions of this §72.3 adopted to be effective January 29, 2015, 40 TexReg 378

►RULE §72.4 Impaired Licensees and Applicants

(a) The board shall require a licensee or applicant to submit to a mental and/or physical examination by the appropriate health care provider designated by the board if the board has probable cause to believe that the licensee or applicant is impaired. An impaired licensee or applicant is considered to be one who is unable to practice chiropractic with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition.

(b) Probable cause may include but is not limited to, any one of the following:

(1) sworn statements from two people, willing to testify before the board, that a certain licensee or applicant is impaired;

(2) evidence that a licensee or applicant left a treatment program for alcohol or chemical dependency before completion of that program;

(3) evidence that a licensee or applicant is guilty of intemperate use of drugs or alcohol;

(4) evidence of repeated arrests of a licensee or applicant for intoxication or offenses in which intoxication is a factor;

(5) evidence of recurring temporary commitments to a mental institution of a licensee or applicant;

(6) chiropractic records and/or medical records showing that a licensee or applicant has an illness or condition which results in the inability to function properly in his or her practice; or

(7) medical records evidencing a mental or physical condition of the licensee or applicant.

Source Note: The provisions of this §72.4 adopted to be effective January 29, 2015, 40 TexReg 378

►RULE §72.5 Approved Chiropractic Schools and Colleges

(a) The board may annually review and approve those chiropractic schools whose graduates are eligible for examination and licensure under Subchapter G of the Chiropractic Act.

(b) A bona fide reputable chiropractic school as that term is used in Subchapter G of the Chiropractic Act is a school which is accredited by a chiropractic educational accrediting body that is a member of the Councils on Chiropractic Education International.

Source Note: The provisions of this §72.5 adopted to be effective January 29, 2015, 40 TexReg 378

►RULE §72.6 Time, Place, and Scope of Examination

- (a) All applicants shall take and pass Parts I, II, III, IV and Physiotherapy of the National Board Examination and the board's Jurisprudence Examination.
- (b) The passing score on each part of the National Board Examination is 375. The passing score for the Jurisprudence Examination is 75%.
- (c) Regular jurisprudence examinations for licensure shall be given during the calendar year at the discretion of the board. All examinations shall be conducted in the English language.
- (d) An applicant may not take the Jurisprudence Examination unless the applicant has successfully completed all parts of the National Board Examination which are required by the board and requirements set forth in 22 T.A.C. §72.3(c)(1), (2).
- (e) A license shall not be issued by the board to any examinee who has been detected in a deceptive or fraudulent act while an examination is in progress.
- (f) When examination results are delivered to the Board they become the property of the board and shall not be returned to the examinee. All test results must be retained by the board or an agency designated by the board to be preserved for a period of one year after final grading in order to allow an examinee the opportunity to request an analysis of such person's performance, which request must be made in writing.
- (g) Each applicant having a passing score must request from the National Board that a true and correct copy of the score report showing the results of each part of the National Board Examination be sent to the board.

Source Note: The provisions of this §72.6 adopted to be effective January 29, 2015, 40 TexReg 378; amended to be effective November 1, 2016, 41 TexReg 7483

►RULE §72.7 Jurisprudence Examination

(a) An applicant may not take the Jurisprudence Examination unless he or she has complied with all the requirements in the Chiropractic Act, Occupations Code §§201.302 - 201.304, including having fulfilled the educational requirements of Occupations Code §201.303.

(b) Examinees will be examined on the laws and board rules governing the practice of chiropractic in this state.

(c) The type of questions will be true-false, multiple choice, or essay. Certain time periods shall be assigned to each subject for completion.

(d) The discretion of the board on examination matters, including grades, is final.

Source Note: The provisions of this §72.7 adopted to be effective January 29, 2015, 40 TexReg 378

►RULE §72.8 Failure to Appear at Jurisprudence Examination

(a) If an applicant notifies the board no later than one day prior to the date of examination that he or she is unable to take the examination, the board will apply the examination fee to a subsequent application to take the examination.

(b) If an applicant fails to appear for a scheduled examination without prior notice to the board, the applicant must pay another examination fee when he or she applies for a subsequent examination unless the board excuses the non-appearance as provided in subsection (c) of this section.

(c) An applicant who fails to appear for examination without prior notice may be excused for illness, death in the immediate family, disabling traffic accident, court appearance, jury duty, or military duty, or other extenuating circumstances beyond the control of the applicant. The applicant must submit to the board a notarized affidavit setting out the reasons for not appearing, along with any supporting documents, no later than 14 days after the examination date. Documentation for medical absences must have the original signature of the medical practitioner. Stamped signatures will not be accepted.

Source Note: The provisions of this §72.8 adopted to be effective January 29, 2015, 40 TexReg 378

►RULE §72.9 Reexaminations

(a) An examinee who fails to pass the examination shall be permitted to take a subsequent examination, provided the examinee applies for reexamination and pays a reexamination fee as provided in §78.6 of this title (relating to Fees). An examinee shall be required to make a grade of 75% or better on any subsequent examination.

(b) An applicant may take the jurisprudence examination no more than twice in one calendar year. If an applicant fails to achieve a passing score after the second attempt, the applicant must reapply by submitting a new application and required materials and fees, as provided in §72.2 of this title (relating to Application for License).

Source Note: The provisions of this §72.9 adopted to be effective January 29, 2015, 40 TexReg 378

►RULE §72.10 Disqualification to Take Jurisprudence Examination

(a) An applicant who wishes to take an examination given by the board but who has been disqualified for failure to comply with this chapter (relating to Applications and Applicants), or for failure to meet the requirements of the Chiropractic Act, shall be entitled to a hearing upon written request to the board by the applicant.

(b) The applicant shall be given at least a ten day notice of the date, time, and place of the hearing unless such notice is waived in writing by the applicant. A hearing under this section is subject to the Administrative Procedure Act.

Source Note: The provisions of this §72.10 adopted to be effective January 29, 2015, 40 TexReg 378

►RULE §72.11 Temporary Faculty License

(a) The board may issue a temporary faculty license to a person that meets the requirements set forth under Texas Occupations Code §201.308.

(b) An applicant for a temporary faculty license under this section shall apply to the board, in writing, on a form prescribed by the board, prior to beginning work at the sponsoring school. The application shall be submitted on the applicant's behalf by the sponsoring school and shall be signed by either the dean of the chiropractic school or the president of the institution.

(c) In order to receive a license under this section, a person must sign and agree to the following oath: "I affirm that I have read and that I am familiar with the Texas Chiropractic Act and the Board's rules. I affirm that I will abide by the requirements of the Act and the Board's rules while practicing under this license. I acknowledge that this license grants me a limited privilege to practice chiropractic in Texas and that while practicing under this license I will be subject to the oversight and disciplinary authority of the Board and my sponsoring chiropractic school."

(d) A person practicing under a temporary faculty license may either apply for a renewal of that license or apply for a permanent unrestricted license as provided for under this chapter. If a person has filed either an application for renewal or an application for a permanent unrestricted license, a person may continue to practice under an expired temporary faculty license while the board is evaluating the person's application and while waiting for the results of any examination required for permanent licensure.

Source Note: The provisions of this §72.11 adopted to be effective January 29, 2015, 40 TexReg 378

►RULE §72.12 Criminal History Evaluation Letters

(a) Authority. A person may request the Board to issue a criminal history evaluation letter regarding the person's eligibility for a license as authorized by Chapter 53 of the Texas Occupations Code.

(b) Eligibility. Only a person planning to enroll in or who is enrolled in chiropractic school and who has reason to believe that the person is ineligible for licensure due to a conviction or deferred adjudication for a felony or misdemeanor offense may request the criminal history evaluation letter.

(c) Request. The request must include:

- (1) A completed Board request form available from the Board;
- (2) A statement by the person of the basis for the person's potential ineligibility;
- (3) The required fee set out in §78.6 of this title (relating to Required Fees and Charges);
- (4) Official copies of all court documentation regarding a conviction or deferred adjudication which the person believes may make that person ineligible for licensure; and
- (5) A statement from the approved vendor submitting the applicant's fingerprints to the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI) that the person has requested DPS and the FBI to provide a criminal history report to the Board based on fingerprints submitted by the person.

(d) Investigation. The Board has the same powers to investigate a request submitted under this section and the person's eligibility that the Board has to investigate a person applying for a license. The Board may request additional information from the person in order to complete the investigation. The person must timely respond to requests from the Board.

(e) Issuance of Letter. The Board will issue a letter stating the Board's determination as to eligibility within 90 days of the receipt of the items listed in subsection (c) of this section and receipt of the criminal history report on the person from DPS and the FBI. The 90 day period may be extended if the person has not timely provided information requested by the Board. The letter will specifically state either that the Board has determined that a ground for ineligibility does not exist or that the Board has determined that a ground for ineligibility does exist and will set out each basis for potential ineligibility.

(f) Limitation of Board's Determination. In the absence of new evidence known to but not disclosed by the person or not reasonably available to the Board at the time the letter is issued, the Board's ruling on the request determines the person's eligibility with respect to

the grounds for potential ineligibility set out in the letter. The letter is limited to the law in effect on the date the letter is issued and the facts known to the Board at the time the request is submitted and the letter is issued.

Source Note: The provisions of this §72.12 adopted to be effective January 29, 2015, 40 TexReg 378

► RULE §73.1 Definitions

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

- (1) Board--Texas Board of Chiropractic Examiners.
- (2) Chiropractic Act--Occupations Code, Chapter 201.
- (3) Chiropractic Radiologic Technologist (CRT)--A person who is registered with the board under Chapter 74 of this title (relating to Chiropractic Radiologic Technologists).
- (4) Facility--An office, clinic or other place of business that provides chiropractic services by or under the direction of a doctor of chiropractic licensed by the board.
- (5) Health Professions Council Act (HPCA)--Occupations Code, Chapter 101.
- (6) Licensee--A person who is licensed by the board to practice chiropractic in the State of Texas.
- (7) Medical Radiologic Technologist Certification Act (MRTCA)--Occupations Code, Chapter 601.

Source Note: The provisions of this §73.1 adopted to be effective January 29, 2015, 40 TexReg 378

►RULE §73.2 Facility Registration Requirements

(a) A facility shall not provide chiropractic services without first being registered by the board.

(b) An applicant for a facility registration shall submit to the board an application as prescribed by the board, along with the facility registration fee as provided in §78.6 of this title (relating to Required Fees and Charges). The application must be signed by the owner, if a sole proprietorship, or by an authorized representative, if a partnership or corporation.

(c) The following information shall be included in the application and upon renewal:

(1) the legal name of the facility and street address, and telephone and facsimile numbers for the facility;

(2) the type of legal entity (sole proprietorship, partnership, corporation);

(3) the name, address, and percentage of ownership of each person with a 10% or greater ownership interest in the facility; if a person is an individual, include the person's social security number, driver's license number, date of birth, and if a licensee, his or her license number;

(4) the name and license number of each doctor licensed by the board who is employed or otherwise engaged to provide chiropractic services at the facility; and

(5) any other information requested by the board that it deems necessary for processing the application or for other regulatory purposes.

(d) Social security numbers are collected for purposes of child support collection and student loan enforcement.

(e) A facility owner must be 21 years of age or older.

(f) Facilities that share office space or staff but otherwise maintain separate business identities, including billing, accounting and other functions, shall be treated as separate facilities and a registration and registration fee will be required for each facility.

(g) No registration will be issued on an incomplete submission. Application or renewal packages that are submitted without all of the required documents or fees will be deemed incomplete and returned to the applicant.

(h) This chapter does not apply to hospitals or public health clinics registered with the Department of State Health Services or another state agency.

(i) The board may deny an application for a facility registration by a sole proprietor or partnership if it receives information from an administering entity that the applicant has

defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial under this subsection upon receipt of information from an administering entity that the applicant whose application was denied is now in good standing, as provided in §72.3(b) of this title (relating to Qualifications of Applicants).

(j) As a courtesy, at least 30 days prior to the expiration of a facility's certificate of registration, the Board shall send written notice of the impending expiration to an owner of a facility and to each chiropractor practicing in said facility. Failure of a facility owner and/or chiropractors practicing in said facility to receive such written notice shall not affect the renewal date of said certificate of registration.

(k) A licensee who practices chiropractic in a facility that the licensee knows is not registered under this chapter is subject to disciplinary action as provided in §78.9 of this title (relating to Disciplinary Guidelines).

Source Note: The provisions of this §73.2 adopted to be effective January 29, 2015, 40 TexReg 378

►RULE §73.3 Annual Renewal of Facility Registrations

(a) On or before the designated renewal date each year, a registered facility shall renew its certificate of registration, by submitting:

- (1) a facility renewal form as prescribed by the board;
- (2) complete information as required on the form, including changes in information since the original application or last renewal;
- (3) for a facility that is not owned by a licensee, the following additional information shall be submitted:
 - (A) the hours of operation for each clinic;
 - (B) the names and working hours at each clinic for each licensed chiropractor; and
 - (C) the names and working hours at each clinic for all other personnel; and
- (4) the facility registration fee as provided in §78.6(a) of this title (relating to Required Fees and Charges).

(b) A facility registration expires on:

- (1) the first day of the owner's birth month if solely owned by a licensed chiropractor;
- (2) the first day of the majority owner's birth month, if owned by more than one licensed chiropractor. If a facility is owned equally by more than one licensed chiropractor, the facility registration expires on the first day of the birth month of the owner listed first on the facility application; or

(3) September 1 if owned by a corporation or someone other than a licensed chiropractor.

(c) If a facility's certificate of registration has expired, the facility may renew its registration by submitting to the board all of the items required by subsection (a) of this section and a fee as provided by §78.6(a) of this title (relating to Fees and Charges for Public Information).

(d) A facility owner that fails to renew the facility's registration on or before the expiration date may also be subject to an administrative penalty and other disciplinary sanctions as provided in §73.5 of this title (relating to Disciplinary Action for Facility Owners).

(e) If a facility's certificate of registration has been expired for more than one year, the Board may close the facility's file.

(f) A facility shall not provide chiropractic services without a current certificate of registration. Operating a facility with an expired certificate of registration constitutes operating a facility without a certificate of registration.

(g) The board shall not renew a facility registration of sole proprietor or partnership if the sole proprietor or a partner is in default of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC) or a repayment agreement with the corporation except as provided by §75.2(c) of this title (relating to Renewal of Chiropractic License). The board may refuse to renew a facility registration of a sole proprietor or partnership if it receives information from an administering entity that the registrant, including a partner, has defaulted on a student loan other than a TGSLC loan, or breached a repayment contract relating to a student loan other than a TGSLC loan or a scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial of renewal under this subsection upon receipt of information from an administering entity that the registrant whose renewal was denied is now in good standing, as provided in §72.3(b) of this title (relating to Qualifications of Applicants). Upon notice that a registrant is again in default or breach of any loan or agreement relating to a student loan or scholarship agreement, the board may suspend the registration or take other disciplinary action as provided in §77.6 of this title (relating to Default on Student Loans and Scholarship Agreements).

(h) Opportunity for hearing:

(1) the board shall notify a registrant, in writing, of the nonrenewal of a registration under subsection (g) of this section and of the opportunity for a hearing under paragraph (2) of this subsection prior to or at the time the annual renewal application is sent.

(2) upon written request for a hearing by a registrant, the board shall set the matter for hearing before the State Office of Administrative Hearings in accordance with §78.8(d) of this title (relating to Complaint Procedures). A registrant shall file a request for a hearing with the board within 30 days from the date of receipt of the notice provided in paragraph (1) of this subsection.

(i) A registration which is not renewed under subsection (g) of this section is considered expired.

(j) When a chiropractic facility ceases providing chiropractic services, the owner shall notify the Board in writing not later than 30 days following the date the facility ceased providing chiropractic services advising of the facility's closure and provide the custodian of records' contact information.

Source Note: The provisions of this §73.3 adopted to be effective January 29, 2015, 40 TexReg 378; amended to be effective November 24, 2015, 40 TexReg 8211

►RULE §73.4 Rules of Conduct for Facility Owners

(a) An owner of an unregistered facility or a facility with an expired registration that continues to provide chiropractic services shall be subject to the same sanctions as a license holder who violates the Chiropractic Act or Board rules.

(b) No facility owner or employee, other than the primary treating doctor of chiropractic, shall control or attempt to control, in any way whatsoever, the professional judgment of such treating doctor with respect to patient care and treatment.

(c) A facility shall maintain a current street address with the board. A different mailing address may be provided in addition to the street address. A facility shall notify the board, in writing, of any change in street or mailing address or ownership within 30 days of the change. The notification shall be signed by the owner or authorized representative of the facility and must include the facility registration number.

(d) A facility shall maintain a current electronic mail address with the board. A facility shall notify the board, by electronic mail, of any change in the electronic mailing address within five (5) business days of the change. The notification must include the facility registration number.

►RULE §73.5 Disciplinary Action for Facility Owners

(a) The board may refuse to issue or renew, suspend, or revoke a facility registration and/or impose an administrative penalty against an owner of a registered facility for a violation, by any employee, agent, or other representative of the facility, including a licensee or CRT employed or otherwise engaged by the facility, of the following:

- (1) the rules or an order of the board;
- (2) the Chiropractic Act;
- (3) the HPCA;
- (4) the MRTCA;
- (5) the rules or an order of the TDH; or
- (6) any other rule or statute, for which the board may impose disciplinary action if violated.

(b) Disciplinary action against an owner of a facility or a chiropractor working in a facility, including the imposition of administrative penalties, is governed by the Administrative Procedures Act, Government Code, Chapter 2001, and applicable enforcement provisions of the Chiropractic Act, Occupations Code, Chapter 201, including Subchapters G and K through M.

Source Note: The provisions of this §73.5 adopted to be effective January 29, 2015, 40 TexReg 378

► RULE §74.1 Definitions

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

- (1) Board--The Texas Board of Chiropractic Examiners.
- (2) Chiropractic Radiologic Technologist (CRT) or Registrant--A person who is registered with the board under this chapter.
- (3) Licensee or Chiropractor--A person who is licensed by the board to practice chiropractic in the State of Texas.
- (4) Medical Radiologic Technologist Certification Act--Occupations Code, Chapter 601.
- (5) Supervision--Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic purposes.

Source Note: The provisions of this §74.1 adopted to be effective January 29, 2015, 40 TexReg 378; amended to be effective November 1, 2016, 41 TexReg 7483

►RULE §74.2 Registration of Chiropractic Radiologic Technologists

(a) Registration required. Any person performing radiologic procedures in a chiropractic facility must register with the board, on a form prescribed by the board. This section does not apply to registered nurses or to persons certified under the Medical Radiologic Technologist Certification Act.

(b) Eligibility. An applicant for registration must either:

(1) submit proof of the applicant's registry with the Texas Medical Board (TMB) and completion of training and instruction as required by 25 TAC §140.518 (relating to Mandatory Training Programs for Non-Certified Technicians); or

(2) perform radiologic procedures for a licensee to whom a hardship exemption was granted by TMB within the previous 12 months under 25 TAC §140.520 (relating to Hardship Exemptions).

(c) Application submission. An applicant shall submit an application for registration, proof of status as provided in subsection (b) of this section, along with the radiologic technologist application fee as provided in §78.6 of this title (relating to Required Fees and Charges).

(d) Renewal. On or before January 1 of each year, a CRT shall renew his or her registration, by submitting:

(1) a registration application;

(2) the radiologic technologist application fee as provided in §78.6 of this title (relating to Required Fees and Charges); and

(3) proof of renewal status as provided in subsection (b) of this section.

(e) Expired registration.

(1) A CRT registration expires on January 1 of each year if it is not timely renewed.

(2) If a CRT's registration has expired, a person may renew his or her registration by submitting to the board all of the items required by subsection (d) of this section and a fee as provided in §78.6 of this title (relating to Required Fees and Charges).

(3) A person who fails to renew his or her registration on or before the expiration date may also be subject to an administrative penalty and other disciplinary sanctions as provided in subsection (h) of this section.

(f) Incomplete applications. No registration will be issued on an incomplete submission. Application or renewal packages that are submitted without all of the required documents or fees will be deemed incomplete and returned to the applicant.

(g) TMB authorization. A person may not perform radiologic procedures if that person is removed from the TMB registry or the hardship exemption under which the person is working is expired or revoked even if the person holds a valid CRT registration with the board. A CRT must provide to the board a copy of a hardship exemption granted by TMB within five days of its issuance if the exemption is granted prior to the registration renewal deadline.

(h) Disciplinary sanctions. The board may refuse to issue or renew, suspend, or revoke a CRT registration and/or impose an administrative penalty for the following:

- (1) violation of the rules or an order of the board;
- (2) violation of the Medical Radiologic Technologist Certification Act;
- (3) violation of the rules or an order of TMB;
- (4) violation of the Texas Chiropractic Act; or
- (5) nonpayment of registration fees.

(i) TMB compliance. All registrants shall comply with the rules of TMB for the control of radiation.

(j) Supervision required. A CRT shall perform radiological procedures only under the supervision of a licensee physically present on the premises.

(k) Cineradiography. Procedures that include cineradiography are limited to use by a licensee who has passed a course in its use, approved by the board.

(l) Non-static procedures. Any non-static procedure has the potential to be more dangerous and hazardous and by definition may only be performed by a licensee or a certified medical radiologic technologist.

(m) Licensee responsibility. A licensee shall not authorize or permit a person:

(1) who is not registered under this section to perform radiologic procedures on a patient unless otherwise authorized under the Medical Radiologic Technologist Act or 25 TAC Chapter 140, Subchapter J (relating to Medical Radiologic Technologists); or

(2) to perform radiologic procedures on a patient if that person has been removed from the registry of TMB or the licensee's hardship exemption has been revoked or has expired.

(n) Licensee compliance. A licensee shall comply with the Medical Radiological Technologist Certification Act and all applicable rules of TMB.

(o) Laws governing disciplinary action. Disciplinary action against a CRT, including the imposition of administrative penalties, is governed by the Administrative Procedure Act, Government Code, Chapter 2001, and applicable enforcement provisions of the Texas Chiropractic Act, Occupations Code, Chapter 201, including Subchapters K through M.

Source Note: The provisions of this §74.2 adopted to be effective January 29, 2015, 40 TexReg 378; amended to be effective November 24, 2015, 40 TexReg 8211; amended to be effective November 1, 2016, 41 TexReg 7483

►RULE §75.1 Notification and Change of Address

(a) Licensees shall maintain a current physical home and business address with the Board. In addition, a different mailing address may be provided beyond that of the home and business address. Within 30 days of a change in any of these addresses, a licensee shall notify the Board of the change in writing via U.S. mail, electronic-mail, facsimile, or other written communication. The notification of address change shall clearly and legibly identify the licensee, the address to be changed, the license number(s) associated with the address, and shall be signed by the licensee(s). [A change of address submitted through any of the online registration portals, including Texas.gov, is not valid and must be submitted in writing as indicated within this rule.]

(b) The notification shall be signed by the licensee and must include the license number.

(c) A licensee shall maintain a current electronic mail address with the board. A licensee shall notify the board, by electronic mail, of any change in the electronic mailing address within five (5) business days of the change. The notification must include the license number.

►RULE §75.2 Renewal of Chiropractic License

(a) Annual renewal.

(1) Annual renewal of a licensee's license shall be accomplished on or before the first day of the licensee's birth month (first day of the birth month) by submitting:

(A) the license renewal form provided by the board;

(B) the renewal fee for an active license as provided in §78.6 of this title (relating to Required Fees and Charges);

(C) any late fees, if applicable, as provided in subsection (h) of this section; and

(D) verification of continuing education attendance as required by §75.5 of this title (relating to Continuing Education).

(2) Except as provided in §75.6 of this title (relating to Failure to Meet Continuing Education Requirements), incomplete submission of any of the information required for renewal shall not constitute a completed annual renewal and an annual renewal certificate shall not be issued.

(3) Prior to the due date for an annual renewal, a licensee may instead apply for inactive status in accordance with §75.4 of this title (relating to Inactive Chiropractic License Status).

(4) A military service member who holds a license is entitled to two (2) years of additional time to complete:

(A) any continuing education requirements; and

(B) any other requirement related to the renewal of the military service member's license.

(b) Locum tenens information.

(1) A licensee who substitutes as the treating doctor for another licensee in the facility of the absent licensee shall, along with the information required for annual renewal, provide a list of facilities in which they served as a locum tenens doctor during the past twelve month period.

(2) A licensee serving as a locum tenens doctor shall have proof of licensure readily available when requested. Proof of licensure may include:

(A) a copy of the current license renewal certificate; or

(B) a copy of the wallet size license.

(3) The locum tenens list shall include the following for each facility:

- (A) licensee's name;
- (B) facility physical address; and
- (C) facility registration number displayed on the current facility registration card.

(4) If a facility registration number is not provided, a locum tenens doctor shall report the facility registration number as "not available." Licensees for whom facility numbers are reported as "not available" may be subject to investigation for the operation of an unregistered facility.

(c) Licensees in default of TGSLC student loan or repayment agreement.

(1) The board shall not renew a license of a licensee who is in default of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC) or a repayment agreement with the corporation except as provided in paragraphs (2) and (3) of this subsection.

(2) For a licensee in default of a loan, the board shall renew the license if:

(A) the renewal is the first renewal following notice to the board that the licensee is in default; or

(B) the licensee presents to the board a certificate issued by the corporation certifying that:

- (i) the licensee has entered into a repayment agreement on the defaulted loan; or
- (ii) the licensee is not in default on a loan guaranteed by the corporation.

(3) For a licensee who is in default of a repayment agreement, the board shall renew the license if the licensee presents to the board a certificate issued by the corporation certifying that:

(A) The licensee has entered into another repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation or on a repayment agreement.

(4) This subsection does not prohibit the board from issuing an initial license to a person who is in default of a loan or repayment agreement but is otherwise qualified for licensure. However, the board shall not renew the license of such a licensee, if at the time of renewal, the licensee is in default of a loan or repayment agreement except as provided in paragraph (2)(B) or (3) of this subsection.

(d) Licensees in default of other student loans or scholarship obligations.

(1) This subsection applies to a licensee in default of a student loan other than a loan guaranteed by the TGSLC, in breach of a loan repayment agreement other than one related to a TGSLC loan, or in breach of any scholarship contract.

(2) The board may refuse to renew a chiropractic license if it receives information from an administering entity that the licensee has defaulted on a student loan or has breached a student loan repayment contract, or a scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial of renewal under this subsection upon receipt of information from an administering entity that the licensee whose renewal was denied is now in good standing, as provided in §72.3(b) of this title (relating to Qualifications of Applicants).

(e) Upon notice that a licensee is again in default or breach of any loan or agreement relating to a student loan or scholarship agreement under subsections (c) or (d) of this section, the board may suspend the license or take other disciplinary action as provided in §77.6 of this title (relating to Default on Student Loans and Scholarship Agreements).

(f) Opportunity for hearing.

(1) The board shall notify a licensee, in writing, of the nonrenewal of a license under subsection (c) or (d) of this section and of the opportunity for a hearing under paragraph (2) of this subsection prior to or at the time the annual renewal application is sent.

(2) Upon written request for a hearing by a licensee, the board shall set the matter for hearing before the State Office of Administrative Hearings in accordance with §78.8(d) of this title (relating to Complaint Procedures). A licensee shall file a request for a hearing with the board within 30 days from the date of receipt of the notice provided in paragraph (1) of this subsection.

(g) A license which is not renewed under subsection (c) or (d) of this section is considered expired. Subsections (h) and (i) of this section apply to a license not renewed under subsection (c) or (d) of this section.

(h) Expired license.

(1) If an active or inactive license is not renewed on or before the first day of the licensee's birth month of each year, it expires.

(2) If a person's license has expired for 90 days or less, the person may renew the license by paying to the board the required renewal fee and a late fee, as provided in §78.6 of this title (relating to Required Fees and Charges).

(3) If a person's license has expired for longer than 90 days, but less than one year, the person may renew the license by paying to the board the required renewal fee and a late fee, as provided in §78.6 of this title.

(4) Except as provided by paragraphs (5) and (6) of this subsection, if a person's license has expired for one year or longer, the person may not renew the license but may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining an initial license.

(5) At the board's discretion, a person whose license has expired for one year or longer may renew without complying with paragraph (4) of this subsection if the person moved to another state or foreign country and is currently licensed in good standing and has been in practice in the other state or foreign country for two years preceding application for renewal. The person must also pay the board a fee equal to the examination fee, as provided in §78.6 of this title. A person is considered "currently licensed" if such person is licensed by another licensing board recognized by the Board. The Board shall recognize another licensing board that:

(A) has licensing requirements substantially equivalent to the requirements of the Chiropractic Act; and

(B) maintains professional standards considered by the Board to be equivalent to the standards under the Chiropractic Act.

(6) At the board's discretion, a person whose license has expired for one year but not more than three years may renew without complying with paragraph (4) of this subsection if the board determines that the person has shown good cause for the failure to renew the license and pays to the board:

(A) the required renewal fee for each year in which the licensee was expired; and

(B) an additional fee in an amount equal to the sum of:

(i) the jurisprudence examination fee, multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) two times the jurisprudence examination fee.

(7) Good cause for the purposes of paragraph (6) of this subsection means extenuating circumstances beyond the control of the applicant which prevented the person from complying timely with subsection (a) of this section, such as extended personal illness or injury, extended illness of the immediate family, or military duty outside the United States where communication for an extended period is impossible. Good cause is not shown if the applicant was practicing chiropractic during the period of time that the applicant's license

was expired. With the renewal application, an applicant must submit a notarized sworn affidavit and supporting documents that demonstrate good cause, in the opinion of the board.

(8) The Board shall exempt a person who holds a license issued by the Board from any increased fee or penalty imposed by the Board for failing to renew the license in a timely manner if the person establishes to the satisfaction of the Board that the failure to renew the license in a timely manner is because the person was serving as a military service member. For purposes of this section, "military service member" means a person who is on active duty.

(i) Practicing with an expired license. Practicing chiropractic with an expired license constitutes practicing chiropractic without a license. A licensee whose license expires shall not practice chiropractic until the license is renewed or a new license is obtained as provided by subsection (h) of this section, except for a license which is not renewed under subsection (c) or (d) of this section if the licensee has timely requested a hearing under subsection (f) of this section.

(j) Renewal of licenses. A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within two weeks of the date of the board's request.

Source Note: The provisions of this §75.2 adopted to be effective January 29, 2015, 40 TexReg 379; amended to be effective November 24, 2015, 40 TexReg 8211

►RULE §75.3 Temporary Chiropractic License

(a) A person licensed as a chiropractor in good standing in another state, the District of Columbia, or a territory of the United States may practice chiropractic as defined by the Occupations Code, §201.002 and provide chiropractic services to individuals, groups, or organizations within the State of Texas for a period of time not to exceed 30 days within a calendar year as provided by this section. A person applying for temporary privileges shall apply in writing, to the board, on a form prescribed by the board, at least 14 days prior to the expected working days in Texas. The executive director of the board, at his or her discretion, may accept an application within a lesser time period if the applicant has submitted a full and complete application. The application must include a description of the chiropractic services to be performed and the event, meeting, or function at which the services are to be performed, identification of the persons to be treated, the specific dates the services are to be performed, and documentation of eligibility as provided in subsection (b) of this section.

(b) An applicant for a temporary license must have a current, active, and unrestricted license, without any pending disciplinary proceedings, as a chiropractor in another state, the District of Columbia, or a territory of the United States. An applicant must submit with the application:

(1) a statement which has a notary seal or a state seal from the appropriate chiropractic licensing agency in another jurisdiction confirming that the applicant has an active license and is in good standing with that jurisdiction, with no pending disciplinary orders or proceedings against the applicant; and

(2) a letter of invitation or other document from the sponsoring entity showing that the applicant is invited or authorized to participate and to provide chiropractic services at a scheduled event, meeting, or other function in Texas.

(c) A person granted temporary privileges under this section shall abide by the rules of the board during the period the privileges are in effect. The granting of a temporary license constitutes limited authority to practice chiropractic in Texas only within the scope of services and in connection with the persons to be treated as described in the application and approved by the executive director. A person granted temporary privileges may not provide chiropractic services to the general public at an event, meeting, or other function,

or at any other location in Texas. Violations of the Chiropractic Act, board rules, or the temporary license will subject the temporary licensee to disciplinary action by the board.

(d) This section does not apply to those persons who reside or who are in the process of establishing residence in Texas or who provide or intend to provide chiropractic services primarily in Texas. This section cannot be used as an entry to licensure in Texas.

Source Note: The provisions of this §75.3 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §75.4 Inactive Chiropractic License Status

(a) Each year, on or before a licensee's renewal date, a licensee who is not currently practicing chiropractic in Texas may renew his or her license as provided by §75.2 of this title (relating to Renewal of Chiropractic License) and request, on a form prescribed by the board, that it be placed on inactive status. In order to continue on inactive status and to maintain a valid license, an inactive licensee must renew his or her license and make a new request for inactive status each year.

(b) If the application is late, the licensee shall be subject to §75.2(h) of this title. A licensee on inactive status is not required to complete continuing education as provided in §75.5 of this title (relating to Continuing Education).

(c) To place a license on inactive status at a time other than the time of license renewal, a licensee shall:

- (1) return the current renewal certificate to the board office; and
- (2) submit a signed, notarized statement stating that the licensee shall not practice chiropractic in Texas while the license is inactive, and the date the license is to be placed on inactive status.

(d) To reactivate a license which has been on inactive status for five years or less, a licensee shall, prior to beginning practice in this state:

- (1) apply for active status on a form prescribed by the board;
- (2) submit written verification of attendance at and completion of continuing education courses as required by §75.5 of this title for the number of hours that would otherwise have been required for renewal of a license. Approved continuing education earned within the calendar year prior to the licensee applying for reactivation may be applied toward the continuing education requirement; and
- (3) pay the Active License Renewal Fee.

(e) A license which has been on inactive status for a period of more than five years may be reactivated only upon successfully passing Part IV of the National Board of Examination and the board's Jurisprudence Examination prior to reactivation. A licensee who has maintained an inactive status with the Board for a period greater than five (5) years may be exempt from compliance with the requirement of this subsection to retake Part IV of the National Board of Examination if they have held an active, unrestricted license in another state or

foreign jurisdiction that is held in good standing. In no event shall an inactive status be maintained before this Board in excess of twenty (20) years.

(f) Prohibition against Practicing Chiropractic in Texas. A licensee while on inactive status shall not practice chiropractic in this state. The practice of chiropractic by a licensee while on inactive status constitutes the practice of chiropractic without a license.

Source Note: The provisions of this §75.4 adopted to be effective January 29, 2015, 40 TexReg 379

► RULE §75.5 Continuing Education

(a) Condition of Renewal. A licensee is required to attend continuing education courses as a condition of renewal of a license.

(b) Requirements.

(1) Every licensee shall attend and complete 16 hours of continuing education each year unless a licensee is exempted under subsection (d) of this section. Each licensee's reporting year shall begin on the first day of the month in which his or her birthday occurs.

(2) The 16 hours of continuing education may be completed at any course or seminar elected by the licensee, which has been approved under §75.7 of this title (relating to Approved Continuing Education Courses).

(A) A licensee must attend any course designated as a "TBCE Required Course," and the course may be counted as part of the 16 hour requirement. Effective with all doctor of chiropractic licenses renewed on or after July 1, 2009, a minimum of four of the 16 required hours of continuing education shall include topics designated by the board.

(i) A minimum of three hours of the total required continuing education shall consist of a course specifically related to the Board's rules including the Board's code of ethics, recordkeeping, documentation, and coding. This continuing education may be taken online through a course offered by the board. In addition to the requirements in §75.7 of this title, an instructor for this continuing education must meet one of the following criteria:

(I) possess a doctorate degree and possess either an active license to practice chiropractic or law;

(II) is part of the full-time faculty of a chiropractic college accredited by the Council of Chiropractic Education;

(III) is some other qualified health care provider; or

(IV) is an individual with substantial knowledge, skills and abilities in chiropractic practice.

(ii) A minimum of one hour of the total required continuing education shall relate to risk management relating to the practice of chiropractic in Texas. For the purpose of this rule, risk management refers to the identification, investigation, analysis, and evaluation of risks and the selection of the most advantageous method of correcting, reducing, or eliminating, identifiable risks. This continuing education may be taken online through a

course offered by the board. In addition to the requirements in §75.7 of this title, an instructor for this continuing education must meet one of the following criteria:

(I) possess a doctorate degree and possess either an active license to practice chiropractic or law;

(II) is part of the full-time faculty of a chiropractic college accredited by the Council of Chiropractic Education;

(III) is some other qualified health care provider; or

(IV) is an individual with substantial knowledge, skills and abilities in chiropractic practice.

(iii) Notwithstanding the requirements in this clause, licensees who were initially licensed on or after September 1, 2012, must complete at least eight hours of continuing education in coding and documentation for Medicare claims no later than their second renewal period unless they are in exempted status as noted in subsection (d) of this section. The eight hours of required continuing education in coding and documentation for Medicare claims may be counted as part of the total of 16 continuing education hours required during the year in which the eight hours were completed.

(iv) In addition, from time to time, the board may issue public memoranda regarding urgent or significant public health issues that licensees need to be aware of. The board will publish such memoranda on the board's web site and distribute the memoranda to the major continuing education providers.

(B) A licensee who serves as an examiner for the National Board of Chiropractic Examiners' Part IV Examination may receive credit for this activity, not to exceed eight (8) hours each year.

(C) No more than ten hours or credit may be obtained through online courses. This provision will become effective on or after January 1, 2016.

(3) A list of approved courses, including TBCE Required Courses, is available on the board's website, www.tbce.state.tx.us, as provided in §75.7(g) of this title. The board will also provide notice of a TBCE Course in its newsletter.

(4) A licensee who is unable to travel for the purpose of attending a continuing education course or seminar due to a mental or physical illness or disability may satisfy the board's continuing education requirements by completing 16 hours of approved continuing education courses online. Video courses will no longer qualify for credit.

(A) If the licensee is unable to take an online course, the licensee must submit a request for special accommodations to complete their continuing education requirements.

(B) In order for an online course to be accepted by the board, a licensee must submit a letter from a licensed doctor of chiropractic, medicine, or osteopathy who is not associated with the licensee in any manner. In the letter, the doctor must state the nature of the illness or disability and certify that the licensee was ill or disabled, and unable to travel for the purpose of obtaining continuing education hours due to the illness or disability.

(C) A licensee is required to submit a new certificate for each year an exemption is sought. An untrue certification submitted to the board shall subject the licensee to disciplinary action as authorized by the Chiropractic Act, Occupations Code §201.501 and §201.502.

(D) The ten hour limit provided in subsection (b)(2) of this section for online courses does not apply to a licensee who submits a certification under this subsection. This provision will become effective on or after January 1, 2016.

(c) Verification.

(1) At the request of the Board, a licensee shall submit, to the board, written verification from each sponsor, of the licensee's attendance at and completion of each continuing education course which is used in the fulfillment of the required hours for all years requested.

(2) A licensee submitting hours as a National Boards examiner must submit written verification of the licensee's participation from the National Boards, on National Boards letterhead. The verification must include the licensee's name, board license number, and the date, time, and place of each examination attended by the licensee as an examiner.

(3) Failure to submit verification as required by paragraph (1) of this subsection shall be considered the same as failing to meet the continuing education requirements of subsection (b) of this section.

(d) Qualifying exemption. The following persons are exempt from the requirements of subsection (b) of this section:

(1) a licensee who holds an inactive Texas license. However, if at any time during the reporting year for which such exemption applies such person desires to practice chiropractic, such person shall not be entitled to practice chiropractic in Texas until all required hours of continuing education credits are obtained and the executive director has been notified of completion of such continuing education requirements;

(2) a licensee who is military service member, military veteran, or military spouse of the United States during part of the 12 months immediately preceding the annual license renewal date;

(3) a licensee who submits proof satisfactory to the board that the licensee suffered a mental or physical illness or disability which prevented the licensee from complying with the requirements of this section during the 12 months immediately preceding the annual license renewal date; or

(4) a licensee who is in their first renewal period.

(e) A military service member who holds a license is entitled to two (2) years of additional time to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member's license.

Source Note: The provisions of this §75.5 adopted to be effective January 29, 2015, 40 TexReg 379; amended to be effective July 26, 2015, 40 TexReg 4690; amended to be effective November 24, 2015, 40 TexReg 8211

►RULE §75.6 Failure to Meet Continuing Education Requirements

(a) A licensee who fails to meet the minimum continuing education requirements imposed by §75.5 of this title (relating to Continuing Education) shall have his or her license placed in a Continuing Education Conditional status for a period of 12 months. Renewal of a license will be issued contingent on compliance with this section.

(b) During Continuing Education Conditional status under this section, a licensee may continue to practice provided that he or she enrolls in, attends and satisfactorily completes the required continuing education requirements within the Continuing Education Conditional status period.

(c) Upon submission to the board of written verification of the licensee's attendance at and completion of the required continuing education requirements, the board shall fully reinstate the licensee's license.

(d) If a licensee fails to have his or her license reinstated during any Continuing Education Conditional status period, the licensee's license shall be considered expired from the beginning date of the Continuing Education Conditional status year, and the licensee must obtain a new license as provided by §75.2 of this title (relating to Renewal of Chiropractic License).

(e) Continuing education courses obtained to satisfy any deficiency in a prior reporting year may not be applied toward the continuing education requirements for the next reporting year.

(f) A licensee may not be placed on Continuing Education Conditional status for two consecutive years. If a licensee who was on Continuing Education Conditional status under this section for the prior reporting year is in non-compliance with §75.5 of this title for the current reporting year, his or her license shall be considered expired and shall not be renewed except as provided by subsection (h) of this section.

(g) A licensee subject to subsection (f) of this section shall not practice chiropractic until his or her license is renewed or a new license is obtained as provided by §75.2 of this title.

(h) A licensee subject to subsection (f) of this section may renew his or her license upon completion of all deficient courses and as provided by §75.2 of this title.

Source Note: The provisions of this §75.6 adopted to be effective July 22, 2015, 40 TexReg 4690

►RULE §75.7 Approved Continuing Education Courses

(a) Approved sponsors. The board will approve courses sponsored only by a chiropractic college fully credited through the Council on Chiropractic Education or a statewide, national or international professional association, upon application to the board on a form prescribed by the board. Application forms are available from the board.

(b) Application. A separate application must be submitted for each course.

(1) The application shall be on a form provided by the board. The application form must include the course title, subject and description, the number of requested credit hours, the date, time and location of the course, the method of instruction, the name, address and telephone number of the course coordinator, and the signature of an authorized representative of the sponsor.

(2) In addition to the application form, a detailed hour-by-hour syllabus of the course shall be submitted to the board. The syllabus must provide detailed information sufficient to inform the board of the course material being taught in each hour block. If the course is taught by more than one instructor, the syllabus must also list the name of the instructor of each hour block.

(3) Finally, the curriculum vitae of each instructor shall be submitted to the board.

(4) The course application must include proposed advertising defining course content.

(c) Application deadline and fee. A sponsor may submit an application no later than 60 days prior to the date of the course, along with a nonrefundable application fee as set by the board for each course. For the purpose of this subsection, where the same course is held in multiple cities or towns, with different speakers, each location is considered a separate course. If a continuing education program consists of separate sessions or modules, on different topics and on different dates, each session or module is considered a separate course.

(d) A sponsor shall certify on the application that:

(1) all courses offered by the sponsor for which board approval is requested will comply with the criteria in this section;

(2) the sponsor will be responsible for verifying attendance at each course and will provide a certificate of attendance as set forth in subsection (j) of this section; and

(3) advertising is consistent with the approved course content.

(e) Approval. The board will notify a sponsor in writing of its decision regarding approval of a continuing education course. Approval of each continuing education course is valid for one calendar year only.

(f) Rejection. The board will notify sponsor in writing of its decision regarding rejection of a continuing education course and shall report the basis for the rejection.

(g) Approved list of courses. The board will maintain a list of approved courses on their website at www.tbce.state.tx.us for compliance with §75.5 of this title (relating to Continuing Education).

(h) Criteria for continuing education courses. In order for the board to approve a course, the course must:

(1) be presented by one or more speakers or instructors who demonstrate, through a curriculum vitae or resume, knowledge, training and expertise in the topic to be covered;

(2) have significant educational or practical content to maintain appropriate levels of competency;

(3) relate to the chiropractic scope of practice, as defined by the Texas Occupations Code §201.002, and §78.13 of this title (relating to Scope of Practice), or to knowledge necessary for a licensee to comply with §78.2(a)(1)(F) of this title (relating to Diligence and Efficient Practice of Chiropractic); and

(4) be on a topic from one or more of the following categories:

(A) general or spinal anatomy;

(B) neuro-muscular-skeletal diagnosis;

(C) radiology or radiographic interpretation;

(D) pathology;

(E) public health;

(F) chiropractic adjusting techniques;

(G) chiropractic philosophy;

(H) risk management;

(I) physiology;

(J) microbiology;

(K) hygiene and sanitation;

(L) biochemistry;

(M) neurology;

(N) orthopedics;

(O) jurisprudence;

- (P) nutrition;
- (Q) adjunctive or supportive therapy;
- (R) boundary (sexual) issues;
- (S) insurance reporting procedures;
- (T) chiropractic research;
- (U) HIV prevention and education;
- (V) acupuncture;
- (W) ethics;
- (X) recordkeeping, documentation, and coding; or

(Y) other public health issues identified by the board as provided under §75.5(b)(2)(A)(iv) of this title.

(i) The board will not approve any course on practice management or accept credit for such course in satisfaction of the board's continuing education requirement for licensees.

(j) Sponsor responsibilities. A sponsor of an approved course shall:

(1) notify the board in writing prior to any change in course location, date, or cancellation;

(2) provide a roster of participants who attend the course which contains, at a minimum, each participant's name and current license number if a chiropractor, course number, and number of hours earned by each participant. This roster shall be submitted to the Board no later than 30 days after course completion;

(3) provide each participant in a course with a certificate of attendance. The certificate shall contain the name of the sponsor, the name of the participant, the title of the course, the date and place of the course, the amount and type of credit earned, the course number and the signature of the sponsor's authorized representative;

(4) assure that no licensee receives continuing education credit for time not actually spent attending the course. If any participant's absence exceeds ten minutes during any one hour period, credit for that hour shall be forfeited and noted in the sponsor's attendance roster that is submitted to the Board. Furthermore, the sponsor is responsible for seeing that each person in attendance is in place at the start of each course period;

(5) provide the activity rosters and any other additional information about a course to the board upon request;

(6) shall use the course title listed on the sponsor's application, and approved by the board, to advertise the course;

(7) ensure any advertising of the course adheres to course content approved by the board; and

(8) retain for a period of three years, for each approved course, documentation of compliance with this section, including:

(A) the curriculum presented;

(B) the names and vitae for each speaker;

(C) the attendance roles; and

(D) credit hours earned.

(k) The board may evaluate an approved sponsor or course at any time to ensure compliance with the requirement of this section. Upon the failure of a sponsor or course to comply with the requirements of this section, the board, at its discretion, may revoke the sponsor or the course's approved status.

Source Note: The provisions of this §75.7 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §75.8 Exemption from Licensure Fee for Retired Chiropractor Providing
Voluntary Charity Care

(a) A retired chiropractor licensed by the board whose only practice is the provision of voluntary charity care shall be exempt from the licensure fee. A qualifying chiropractor is a person who maintained a license in good standing prior to seeking the exemption.

(b) As used in this section:

(1) "voluntary charity care" means chiropractic care provided for no compensation to:

(A) indigent populations;

(B) in medically underserved areas; or

(C) for a disaster relief organization.

(2) "compensation" means direct or indirect payment of anything of monetary value, except payment or reimbursement of reasonable, necessary, and actual travel and related expenses.

(c) To qualify for and obtain such an exemption, a chiropractor must truthfully certify under oath, on a form approved by the Board that the following information is correct:

(1) the chiropractor's practice of chiropractic does not include the provision of chiropractic services for either direct or indirect compensation which has monetary value of any kind;

(2) the chiropractor's practice of chiropractic is limited to voluntary charity care for which the chiropractor receives no direct or indirect compensation of any kind for chiropractic services rendered;

(3) the chiropractor's practice of chiropractic does not include the provision of chiropractic services to members of the chiropractor's family; and

(4) the chiropractor's practice of chiropractic comports to the Board's rules.

(d) A chiropractor who qualifies for and obtains an exemption from the licensure fee authorized under this section shall obtain and report continuing education as required under Chapter 75 of the Board's rules.

(e) A retired chiropractor who has obtained an exemption from the licensure fee as provided for under this section, may be subject to disciplinary action under Chapter 201 of the Texas Chiropractic Act and Title 22, Part 3 of the Texas Administrative Code, containing the Board's rules.

(f) A chiropractor who attempts to obtain an exemption from the licensure fee under this section by submitting false or misleading statements to the board shall be subject to

disciplinary action pursuant to Chapter 201 of the Texas Chiropractic Act and Title 22, Part 3 of the Texas Administrative Code, containing the Board's rules, in addition to any civil or criminal actions provided for by state or federal law.

(g) A retired chiropractor providing voluntary charity care must obtain the approval of the Board before returning to active status by complying with all provisions of holding an active license under the Board's rule.

Source Note: The provisions of this §75.8 adopted to be effective November 24, 2015, 40 TexReg 8212

► RULE §76.1 Requirements for Licensure of Out-Of-State Applicants

(a) An individual who is licensed in another state or foreign country shall be issued a license under the following circumstances:

(1) The applicant must be licensed in good standing as a doctor of chiropractic in another state, the District of Columbia, a territory of the United States, or a foreign country, that has licensing requirements that are substantially equivalent to the requirements of the Texas Chiropractic Act, and must furnish proof of such licensure on board forms provided. For the purposes of this chapter, the term "substantially equivalent" means that the jurisdiction from which the doctor is requesting licensure has, or had at the time of licensure, equivalent practices and requirements in the following areas:

- (A) scope of practice;
- (B) continuing education;
- (C) license renewal;
- (D) enforcement practices;
- (E) examination requirements;
- (F) undergraduate education requirements;
- (G) chiropractic education requirements.

(2) The applicant must have passed the National Board of Chiropractic Examiners Examination Parts I, II, III, IV and Physiotherapy, or the National Board of Chiropractic Examiners SPEC Examination with a grade of 375 or better and must request a true and correct copy of the applicant's score report be sent directly to the Texas Board of Chiropractic Examiners.

(3) The applicant must not have failed a licensure exam conducted by the Board within the 10 years immediately preceding the date of application for a license.

(4) The applicant must not have been the subject of a disciplinary action in any jurisdiction in which the applicant is, or has been, licensed and the applicant must not be the subject of a pending investigation in any jurisdiction in which the applicant is, or has been, licensed.

(5) The applicant must sit for and pass the Texas jurisprudence examination with a grade of 75% or better.

(6) For the three years immediately preceding the date of the application, the applicant must have:

(A) practiced chiropractic; or

(B) practiced as a chiropractic educator at a chiropractic school accredited by the Council on Chiropractic Education.

(b) Application and fee. The candidate for licensure will be subject to all application requirements required by §72.2 of this title (relating to Application for Licensure) and subject to the applicable fees established under §78.6 of this title (relating to Required Fees).

(c) Notwithstanding any other law, the Board waives the license application and examination fees paid to the state for an applicant who is a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a license to practice chiropractic in Texas. For purposes of this section, "military spouse" means a person who is married to a military service member.

Source Note: The provisions of this §76.1 adopted to be effective January 29, 2015, 40 TexReg 379; amended to be effective November 24, 2015, 40 TexReg 8212

►RULE §76.2 Requirements for Licensure of Military Spouses

(a) This section applies to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.

(b) The Board may issue a license to an applicant described under subsection (a) of this section who:

(1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a license; or

(2) within the five years preceding the application date held a license in this state that expired while the applicant lived in another state for at least six months.

(c) For the purposes of this section, the term "substantially equivalent" means that the jurisdiction where the applicant described under subsection (b) of this section is currently licensed has, or had at the time of licensure, equivalent practices and requirements in the following areas:

(1) scope of practice;

(2) continuing education;

(3) license renewal;

(4) enforcement practices;

(5) examination requirements;

(6) undergraduate education requirements; and

(7) chiropractic education requirements.

(d) The Board may allow an applicant described under subsection (b) of this section to demonstrate competency by alternative methods in order to meet the requirements for obtaining a license. The standard method of demonstrating competency is described in Chapter 72 of this title (relating to Applications and Applicants). In lieu of the standard method of demonstrating competency for a license, and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:

(1) education;

(2) continuing education;

(3) examinations (including the National Board of Chiropractic Examiners Parts I - IV and Physiotherapy, or the National Board of Chiropractic Examiners SPEC Examination);

(4) letters of good standing;

- (5) letters of recommendation;
- (6) work experience; or
- (7) other methods required by the executive director.

(e) The executive director may issue a license by endorsement to an applicant described under subsection (b) of this section in the same manner as the Texas Department of Licensing and Regulation under §51.404 of the Texas Occupations Code.

(f) The applicant described under subsection (b) of this section shall submit an application for licensure and proof of the requirements under this section on a form and in a manner prescribed by the Board.

(g) The applicant described under subsection (b) of this section shall submit the applicable fee(s) required for a license. Applicants described under subsection (b)(1) are exempt from the license application and examinations fees paid to the state. Applicants described under subsection (b)(2) shall submit the applicable fee(s) required for a license.

(h) The applicant described under subsection (b) of this section shall undergo a criminal history background check.

Source Note: The provisions of this §76.2 adopted to be effective January 29, 2015, 40 TexReg 379; amended to be effective November 24, 2015, 40 TexReg 8212

►RULE §76.3 Requirements for Licensure of Military Service Members and Military Veterans

(a) This section applied to an applicant who is a military service member or military veteran. For purposes of this section, "military service member" means a person who is on active duty and "military veteran" means a person who has served on active duty and was discharged or released from active duty.

(b) The Board shall exempt a person who holds a license issued by the Board from any increased fee or penalty imposed by the Board for failing to renew the license in a timely manner if the person establishes to the satisfaction of the Board that the failure to renew the license in a timely manner is because the person was serving as a military service member. For purposes of this section, "military service member" means a person who is on active duty.

(c) The Board may issue a license to an applicant described under subsection (a) of this section who:

(1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a license; or

(2) within the five years preceding the application date held a license in this state that expired while the applicant lived in another state for at least six months.

(d) For the purposes of this section, the term "substantially equivalent" means that the jurisdiction where the applicant described under subsection (c) of this section is currently licensed has, or had at the time of licensure, equivalent practices and requirements in the following areas:

(1) scope of practice;

(2) continuing education;

(3) license renewal;

(4) enforcement practices;

(5) examination requirements;

(6) undergraduate education requirements; and

(7) chiropractic education requirements.

(e) The Board may allow an applicant described under subsection (c) of this section to demonstrate competency by alternative methods in order to meet the requirements for obtaining a license. The standard method of demonstrating competency is described in

Chapter 72 of this title (relating to Applications and Applicants). In lieu of the standard method of demonstrating competency for a license, and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:

- (1) education;
 - (2) continuing education;
 - (3) examinations (including the National Board of Chiropractic Examiners Parts I - IV and Physiotherapy, or the National Board of Chiropractic Examiners SPEC Examination);
 - (4) letters of good standing;
 - (5) letters of recommendation;
 - (6) work experience; or
 - (7) other methods required by the executive director.
- (f) The executive director may issue a license by endorsement to an applicant described under subsection (c) of this section in the same manner as the Texas Department of Licensing and Regulation under §51.404 of the Texas Occupations Code.
- (g) The applicant described under subsection (c) of this section shall submit an application for licensure and proof of the requirements under this section on a form and in a manner prescribed by the Board.
- (h) Applicants described under subsection (c)(1) are exempt from the license application and examinations fees paid to the state. Applicants described under subsection (c)(2) shall submit the applicable fee(s) required for a license.
- (i) The applicant described under subsection (c) of this section shall undergo a criminal history background check.

Source Note: The provisions of this §76.3 adopted to be effective November 24, 2015, 40 TexReg 8212

►RULE §77.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Board--The Texas Board of Chiropractic Examiners.
- (2) Executive director--The executive director of the Texas Board of Chiropractic Examiners.
- (3) Licensee--A person who is licensed to practice chiropractic in the State of Texas by the Texas Board of Chiropractic Examiners.
- (4) Print media--Newspapers, magazines, classified telephone directories, city, county, and suburban directories, and all other similar publications.
- (5) Public communication--Any written, printed, visual, or oral statement or other communication made to or distributed, or intended for distribution, to a member of the general public or the general public at large.

Source Note: The provisions of this §77.1 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §77.2 Publicity

(a) A registered facility or licensee shall not, on behalf of himself, his partner, associate, or any other licensee or facility affiliated with him, use or participate in the use of any form of public communication which contains a false, fraudulent, misleading, deceptive, or unfair statement of claim, or which has the tendency or capacity to mislead or deceive the general public, as defined in §77.4 of this title (relating to Misleading Claims).

(b) In any form of public communication, a licensee or facility shall not describe services that are inconsistent with the practice of chiropractic as described under §78.13 of this title (relating to Scope of Practice).

(c) A licensee or facility engaging in, or authorizing another to engage in telemarketing of prospective patients shall not misrepresent to the person called any association with an insurance company or another doctor of chiropractic or another chiropractic group or facility.

(1) A licensee, facility, or their agent, engaging in telemarketing shall not promise successful chiropractic treatment of injuries or make any other communication which would be prohibited under subsection (a) of this section.

(2) A licensee, facility, or their agent, engaging in telemarketing are required, at the start of each call, to inform the person called who they are (caller's name) and who they represent (clinic/doctor).

(3) A licensee or facility engaging in telemarketing, either directly or through an agent, shall keep a copy of each script used for calling and a log of all calls made that shall include the date, telephone number, and the name of each person called. Such scripts and logs shall be maintained for a minimum of two years.

(d) Licensees or facilities that intend to include a testimonial as part of any form of public communication shall maintain a signed statement from that person or group to support any statements that may be used in any public communication for a minimum of two years from publication of the testimonial.

(e) Licensees or facilities shall clearly differentiate a chiropractic office, clinic, or facility from another business or enterprise in any form of public communication.

(f) Licensees or facilities shall be identified as either "doctor of chiropractic," "DC," "chiropractor" or "chiropractic" in all forms of public communication in accordance with §201.002 of the Texas Occupations Code. If each licensee that practices in a facility has

identified themselves as required in this subsection, then the facility name need not include "chiropractic" or similar language.

(g) In any form of public communication using the phrase "Board Certified" or similar terminology associated with any credentials, a licensee must identify the board certifying said credentials.

(h) In any form of public communication, if a licensee or facility makes a claim based on one or more research studies, the licensee or facility shall clearly identify the relevant research study or studies and make copies of such research studies available to the board or the public upon request.

(i) In any form of public communication, a licensee or facility shall not advertise any service as "free" unless the public communication clearly and specifically states:

(1) all the component services which will or might be performed at the time of, or as part of, the service;

(2) as to each such component service, whether that service will be free or, if not, the exact amount which will be charged for it; and

(3) if a component service is an evaluation, whether the report of findings will be free or, if not, the exact amount which will be charged for the report of findings.

(j) This section and §77.4 of this title apply to all advertising, communications, or telemarketing done by or on behalf of a licensee or facility, including activities conducted by employees, students being mentored by the licensee, or other agents.

Source Note: The provisions of this §77.2 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §77.3 Patient's Rights to Disclosure of Charges

(a) A licensee shall, on the date of providing goods or services to a patient, disclose to the patient in writing the full amount of the licensee's charges.

(b) Compliance with this rule may be in any written form reasonably calculated to notify the patient of the actual charges for the goods or services provided.

Source Note: The provisions of this §77.3 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §77.4 Misleading Claims

(a) A person advertising chiropractic services shall not use false, deceptive, unfair or misleading advertising, including, but not limited to:

(1) claims intended or reasonably likely to create a false expectation of the favorable results from chiropractic treatment;

(2) claims intended or reasonably likely to create a false expectation of the cost of treatment or the amount of treatment to be provided;

(3) claims reasonably likely to deceive or mislead because the claims in context represent only a partial disclosure of the conditions and relevant facts of the extent of treatment the licensee expects to provide;

(4) claims that state or imply chiropractic services provide a cure for any condition;

(5) claims that chiropractic services cure or lessen the effects of ailments, injuries or other disorders of the human body which are outside the scope of chiropractic practice as defined by Chapter 201 of the Occupations Code and Title 22, Part 3 of the Texas Administrative Code;

(6) claims that state or imply the results of chiropractic services are guaranteed; or

(7) claims that chiropractic services offer results that are not within the realm of scientific proof beyond testimonial statements or manufacturer's claims.

(b) Subsection (a)(2) of this section is not meant to be applicable to circumstances where the cost or amount of treatment varies from an original quotation or advertisement by a reasonable amount.

(c) The standard to be used in determining whether a violation of this rule has taken place is the generally accepted standards of care within the chiropractic profession in Texas.

Source Note: The provisions of this §77.4 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §77.5 Delegation of Authority

(a) The purpose of this section is to encourage the more effective use of the skills of licensees by establishing guidelines for the delegation of chiropractic care tasks to a qualified and properly trained person acting under a licensee's supervision to ensure proper diligence and efficient practice of chiropractic. This section provides the standards for credentialing a chiropractic assistant in Texas.

(b) Except as provided in this section, a licensee shall not allow or direct a person who is not licensed by the board to perform procedures or tasks that are within the scope of chiropractic, including:

- (1) rendering a diagnosis and prescribing a treatment plan; or
- (2) performing a chiropractic adjustment or manipulation.

(c) A licensee may allow or direct a student enrolled in an accredited chiropractic college to perform chiropractic adjustments or manipulations if that student has qualified for admission to the outpatient clinic at the aforementioned college. The chiropractic adjustment or manipulation must be performed under the supervision of a licensee who need not be physically present in the treating room at the time of the adjustment or manipulation, but must be on-site at the time of the adjustment or manipulation.

(d) A licensee may allow or direct certain recent graduates of an accredited chiropractic college to perform chiropractic adjustments or manipulations. A "recent graduate" is one who graduated from a chiropractic college accredited by the Council on Chiropractic Education (CCE) within the previous twelve (12) months.

(1) The licensee shall notify the Board in writing within ten (10) days of the graduate's hire/employment date and provide the name of each recent graduate, the name of the chiropractic college and date of graduation, a copy of the graduate's diploma, and the name and license number of the licensee supervising the graduate.

(2) The supervising chiropractor shall notify the Board within ten (10) days of the graduate's status as contained within this section.

(e) In delegating the performance of a specific task or procedure, a licensee shall verify that a person is qualified and properly trained. "Qualified and properly trained" as used in this section means that the person has the requisite education, training, and skill to perform a specific task or procedure.

(1) Requisite education may be determined by a license, degree, coursework, on-the-job training, or relevant general knowledge.

(2) Requisite training may be determined by instruction in a specific task or procedure, relevant experience, or on-the-job training.

(3) Requisite skill may be determined by a person's talent, ability, and fitness to perform a specific task or procedure.

(4) A licensee may delegate a specific task or procedure to an unlicensed person if the specific task or procedure is within the scope of chiropractic and if the delegation complies with the other requirements of this section, the Chiropractic Act, and the board's rules.

(f) A licensee may allow or direct a qualified and properly trained person, who is acting under the licensee's delegation, to perform a task or procedure that assists the doctor of chiropractic in making a diagnosis, prescribing a treatment plan or treating a patient if the performance of the task or procedure does not require the training of a doctor of chiropractic in order to protect the health or safety of a patient, such as:

(1) taking the patient's medical history;

(2) taking or recording vital signs;

(3) performing radiologic procedures;

(4) taking or recording range of motion measurements;

(5) performing other prescribed clinical tests and measurements;

(6) performing prescribed physical therapy modalities, therapeutic procedures, physical medicine and rehabilitation, or other treatments as described in the American Medical Association's Current Procedural Terminology Codebook, the Centers for Medicare and Medicaid Services' Health Care Common Procedure Coding System, or other national coding system;

(7) demonstrating prescribed exercises or stretches for a patient; or

(8) demonstrating proper uses of dispensed supports and devices.

(g) A licensee may not allow or direct a person:

(1) to perform activities that are outside the licensee's scope of practice;

(2) to perform activities that exceed the education, training, and skill of the person or for which a person is not otherwise qualified and properly trained; or

(3) to exercise independent clinical judgment unless the person holds a valid Texas license or certification that would allow or authorize the person to exercise independent clinical judgment.

(h) A licensee shall not allow or direct a person whose chiropractic license has been suspended or revoked, in Texas or any other jurisdiction, to practice chiropractic in connection with the treatment of a patient of the licensee during the effective period of the suspension or upon revocation.

(i) A licensee is responsible for and will participate in each patient's care. A licensee shall conform to the minimal acceptable standards of practice of chiropractic in assessing and evaluating each patient's status.

(j) It is the responsibility of each licensee to determine the number of qualified and properly trained persons that the licensee can safely supervise. A licensee must be on-call when any or all treatment is provided under the licensee's direction unless there is another licensee present on-site or designated as being on-call. On-call means that the licensee must be available for consultation within 15 minutes either in person or by other means of telecommunication.

(k) A licensee's patient records shall differentiate between services performed by a doctor of chiropractic and the services performed by a person under the licensee's supervision.

(l) No provision contained within this section authorizes a chiropractor to delegate tasks or care to a subordinate in abrogation of any established law, code or provision to the contrary.

Source Note: The provisions of this §77.5 adopted to be effective September 10, 2015, 40 TexReg 5785

►RULE §77.6 Default on Student Loans and Scholarship Agreements

(a) Besides non-renewal of a license under §75.2 of this title (relating to Renewal of Chiropractic License) or §73.3 of this title (relating to Annual Renewal of Facility Registration) of this title, a licensee who has defaulted on a student loan or breached a student loan repayment contract, a scholarship contract by failing to perform his or her service obligation under the contract, or any other agreement between the licensee and the administering entity, relating to payment of a student loan or performance of obligations under a scholarship, may be subject to disciplinary action by the board as authorized by Chapter 56 of the Occupations Code. This section applies to chiropractic licensees and facility licensees who operate as a sole proprietor or partnership.

(b) The board may rescind any disciplinary action taken under this section upon receipt of information from an administering entity that the licensee is now in good standing, as provided in §72.3(b) of this title (relating to Qualification of Applicants).

(c) Upon notice that a licensee is again in default or breach of any loan or agreement relating to a student loan or scholarship, the board may reinstate the original disciplinary action, if rescinded, or take other disciplinary action.

(d) The maximum sanction for a violation of this section is revocation and/or \$1000 administrative penalty per violation. This sanction is incorporated into the board's maximum sanction table provided in §78.10(b) of this title (relating to Schedule of Sanctions) by this reference.

Source Note: The provisions of this §77.6 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §77.7 Request for Information and Records from Covered Entities

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Covered entity--Any person as identified within Health and Safety Code, Title 2. Health, Subchapter I. Medical Records, Chapter 181 Medical Records Privacy, Section 181.001. For the purposes of this rule, covered entities include only chiropractors or chiropractic facility owners regulated by Texas Occupations Code, Chapter 201.

(2) Chiropractic record--Any record regularly utilized, created, or stored by a covered entity in the ordinary course and scope of business pertaining to the history, diagnosis, treatment or prognosis of the patient, including records of other health care practitioners contained in the records of the covered entity.

(3) Patient--Any person who consults or is seen by a covered entity for the purposes of receiving chiropractic care.

(b) Request for chiropractic records. Upon request, a covered entity shall furnish copies of chiropractic records, a summary, or narrative of the records pursuant to a written consent for disclosure. A request may be in oral form if it is documented in writing by the covered entity. The requested information or record shall not be released if the covered entity determines that access to the information would be harmful to the physical, mental, or emotional health of the patient. If the covered entity determines that access to the information would be harmful, the covered entity will document in writing the reasons why the disclosure would be harmful. The covered entity may delete from the requested records confidential information about another person who has not authorized disclosure.

(c) Written consent.

(1) The written consent required by subsection (b) of this section shall be signed by:

(A) the patient;

(B) the patients' personal representative if the patient is deceased;

(C) a parent or legal guardian if the patient is a minor;

(D) a legal guardian if the patient has been adjudicated incompetent to manage his or her personal affairs; or

(E) an attorney ad litem for the patient as authorized by law, including the Health and Safety Code, Title 7, Family Code, Chapter 11 or the Probate Code, Chapter 5.

(2) The written consent shall contain the specific information or chiropractic records to be disclosed under the consent; the reasons or purposes for the disclosure; and the person to whom the information is to be disclosed.

(3) The patient, or other person authorized to consent, has the right to withdraw the consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the written notice of the withdrawal. Any person who received information made confidential by the Chiropractic Act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to disclose information was obtained.

(d) Oral consent.

(1) The oral consent permitted by subsection (b) of this section shall be documented by the covered entity by:

(A) identifying the patient by presentation of valid government identification; or

(B) the presentation of legal documents sufficient to identify a person as the patient's legal representative or guardian; and

(C) written documentation of the oral consent kept by the covered entity must include annotations recording the time, date, and identification of the patient, the patient's personal representative if the patient is deceased, a parent or legal guardian if the patient is a minor, a legal guardian if the patient has been adjudicated incompetent to manage his or her personal affairs; or an attorney ad litem for the patient as authorized by law, including the Health and Safety Code, Title 7, Family Code, Chapter 11 or the Probate Code, Chapter 5.

(2) The written documentation of the oral consent shall contain the specific information or chiropractic records to be disclosed under the oral consent; the reasons or purposes for the disclosure; and the person to whom the information is to be disclosed.

(3) The patient, or other person authorized to consent, has the right to withdraw the consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the oral notice of the withdrawal. Any person who received information made confidential by the Chiropractic Act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to disclose information was obtained.

(e) Reasonable time. A copy of chiropractic records or a summary or narrative of the records requested under subsection (b) of this section shall be furnished by the covered

entity within a reasonable time, not to exceed 15 business days from the date of the request.

(f) Denial of request. If the covered entity denies the request under subsection (b) of this section for a copy of chiropractic records or a summary or narrative of the records, either in whole or in part, the covered entity shall furnish the patient a written statement, signed and dated, stating the reason for the denial. Chiropractic records requested pursuant to subsection (b) of this section may not be withheld based upon:

- (1) a past due account for care or treatment previously rendered to the patient;
- (2) on the lack of a letter of protection; or
- (3) any other document having a similar effect.

(g) Fee for records. The covered entity may charge a reasonable fee for furnishing the information requested under subsection (a) of this section, in accordance with the following provisions:

(1) The fee shall be paid by the patient or someone else on the patient's behalf.

(2) A covered entity may require payment in advance except from another covered entity or other health care provider, including a chiropractor licensed by any other state, territory, or insular possession of the United States or any state or province of Canada, if requested for purposes of emergency or acute medical care.

(3) In the event payment is not received, within ten calendar days from notification of the charge, the covered entity shall notify the requesting party in writing of the need for payment.

(4) A reasonable fee for a paper copy shall be a charge not to exceed:

(A) \$30 for retrieval of records and processing the request, including copies for the first 10 pages;

(B) \$1.00 per page for pages 11-60;

(C) \$.50 per page for pages 61-400; and

(D) \$.25 per page for pages over 400.

(5) A reasonable fee for copies of films or other static diagnostic imaging studies shall be a charge not to exceed \$45 for retrieval and processing, including copies for the first 10 pages, and \$1.00 for each additional page over 10.

(6) Reasonable fees may also include actual costs for mailing, shipping, and delivery fees incurred by the covered entity.

(7) A reasonable fee for completing and signing an affidavit or questionnaire certifying that the information provided is a true and current copy of the records may not exceed \$15.

(8) In addition to the fee contemplated in paragraph (7) of this subsection, reasonable fees may also include the actual costs paid by the covered entity to a notary for notarizing an affidavit, questionnaire, or other document.

(9) Notwithstanding subsection (g), a covered entity may not charge for records where prohibited as noted in Health and Safety Code, Title 2. Health, Subchapter H. Public Health Provisions, Chapter 161 Medical or Mental Health Records or any other applicable state and federal law.

(h) Subpoena not required. A subpoena shall not be required for the release of chiropractic records requested pursuant to subsection (b) of this section.

(i) Nothing within this section should be construed to supersede Health and Safety Code, Title 2, Health, Subchapter I, Medical Records, Chapter 181 Medical Records Privacy or any other applicable state and federal law.

Source Note: The provisions of this §77.7 adopted to be effective November 25, 2015, 40 TexReg 8213

►RULE §77.8 Records and Documentation

(a) An adequate chiropractic record, as described in this section, for each patient shall be maintained for a minimum of six years from the date of last treatment.

(b) If a patient was younger than 18 years of age when last treated by a licensee, the chiropractic records of the patient shall be maintained until the patient reaches age 21 or for six years from the date of last treatment, whichever is longer.

(c) Chiropractic records that relate to any civil, criminal or administrative proceeding shall not be destroyed until the proceeding has been finally resolved.

(d) Chiropractic records shall be maintained for such longer length of time than that imposed by this section when mandated by other federal or state statute or regulation.

(e) Each licensee practicing at a facility and each facility is equally responsible for compliance with this section.

(f) Licensees shall maintain patient and billing records in a manner consistent with the protection and welfare of the patient. A licensee's patient records shall support all diagnoses, treatments, and billing. Records shall be timely, dated, accurate, legible, and signed or initialed by the licensee or the person providing treatment. Electronic signatures are acceptable.

(g) Licensees are required to perform an appropriate history and exam based on the nature of the presenting problem described by the patient and in accordance with accepted documentation guidelines. Accepted guidelines include, but are not limited to, the latest edition of the American Chiropractic Association Clinical Documentation Manual, American Medical Association CPT Code Book, 1997 DG and/or Chiropractic Service Manual Guidelines set forth by CMS.

(h) All patient records for an initial visit shall include:

- (1) Patient History;
- (2) Description of symptomatology or wellness care;
- (3) Examination findings, including imaging and laboratory records when clinically indicated;
- (4) Diagnosis;
- (5) Prognosis;
- (6) Assessment(s);
- (7) Treatment Plan;

(8) Treatment provided or recommended; and
(9) Periodic reassessment(s) when appropriate, with a minimum of once per calendar year.

(i) Each patient visit after the initial visit is considered a subsequent visit unless there is a new illness or injury. The following information must be reported in each patient's file on each subsequent visit:

(1) Updated History:

- (A) Review of the chief complaint(s);
- (B) Changes, if any, since the last visit;

(2) Physical Exam:

- (A) Examination of the area involved in the diagnosis;
- (B) Assessment of any change in the patient's condition since last visit;

(3) Treatment:

- (A) Documentation of treatment given;
- (B) Documentation of patient's response to the treatment rendered on that visit;
- (C) Change in treatment plan or planned referrals if indicated.

(j) All licensed chiropractors shall observe and comply with all documentation laws pertaining to health care providers under state and federal law. Nothing within this section should be construed to constrain or limit the obligation of chiropractors to meet duly authorized law, rules and regulations.

Source Note: The provisions of this §77.8 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §77.9 Out-of-Facility Practice

(a) A licensed chiropractor who provides chiropractic services in a location other than a registered chiropractic facility (out-of-facility services) shall provide the board with a list that contains the following information, for each location:

- (1) its name;
- (2) its address and telephone number;
- (3) the name of the owner or manager; and
- (4) the planned or actual number of visits per week.

(b) At each location, the licensee must display proof of licensure, such as a copy of his or her chiropractic license or the board-issued wallet size license, the name, facility number, address, and telephone number of the registered facility the licensee either owns or is employed at, and the consumer information required to be displayed under §78.7 of this title (relating to Public Interest Information). In lieu of displaying such information, the licensee may provide to each patient an information sheet that includes the information required by this subsection.

(c) A licensee must either be the registered owner of or be employed at a registered chiropractic facility in order to provide out-of-facility services. All out-of-facility services must be provided in conjunction with a registered facility.

(d) This section does not apply to a licensee who treats a patient at the patient's home, because the patient is physically unable to travel to the chiropractic facility.

(e) A licensee shall file the list required by subsection (a) of this section, no later than the 10th day after the date that out-of-facility services were first performed, and annually, thereafter, along with the licensee's annual license renewal.

(f) A licensed chiropractor that performs services as a designated doctor under Texas Labor Code, Title 5, is exempted from compliance with this section where acting as a designated doctor. This exemption does not preclude compliance or remove any duties under the Texas Labor Code or the rules promulgated by the Texas Department of Insurance, Division of Workers' Compensation.

(g) A licensee performing pro bono services is exempted from compliance with this section.

Source Note: The provisions of this §77.9 adopted to be effective January 29, 2015, 40 TexReg 379; amended to be effective July 26, 2015, 40 TexReg 4691

►RULE §77.10 Rules to Prevent Fraud

(a) Fraud and Abuse Policy. Health care fraud is everyone's concern. It exists, in some degree, in every health care profession and in every area of the United States. The Board takes a strong position against any form of healthcare fraud. Health care fraud can be defined as wantonly misleading or misrepresenting patient treatment circumstances or any other dynamic of the healthcare industry, resulting in any type of financial gain for the doctor, patient, or any other third party or entity. The Board opposes any type of fraud within the chiropractic profession, including insurers who use unfair medical review practices that create obstacles to chiropractic access and reasonable and necessary care for patient constitutes fraud and abuse. In particular, fraud in the practice of chiropractic should be prevented when filing workers' compensation and insurance claims.

(b) Fraud Definition. Fraud is defined as an intentional misrepresentation where the following conditions are present:

- (1) there must be a cause of deception;
- (2) the act or acts must show an intentional misrepresentation of fact; and
- (3) the provider must stand to gain financially from the deception and misrepresentation.

(c) Incorporation by Reference. As part of its policy for the prevention of fraud, the Board incorporates by reference into this section the following rules under this title: §72.2, relating to Application for License; §75.5, relating to Continuing Education; §78.1, relating to Unprofessional Conduct; §78.2, relating to Proper Diligence and Efficient Practice of Chiropractic; §77.2, relating to Publicity; and §77.8, relating to Records and Documentation.

Source Note: The provisions of this §77.10 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §77.11 Code of Ethics

(a) Licensees shall employ their best good faith efforts to provide information and facilitate understanding to enable the patient to make an informed choice with regard to proposed chiropractic treatment. Licensees shall allow the patient to make his or her own determination on such treatment.

(b) Licensees should willingly seek consultation with other health care professionals when such consultation would benefit their patients and when such consultation is considered appropriate.

(c) Licensees shall not discriminate as to which patients they choose to serve on the basis of race, religion, ethnicity, nationality, creed, gender, handicap or sexual preference.

(d) Licensees shall conduct themselves as members of a learned profession and as members of the greater healthcare community dedicated to the promotion of health, the prevention of illness and the alleviation of suffering. As such, licensees should collaborate and cooperate with other health care professionals to protect and enhance the health of the public with the goals of reducing morbidity, increasing functional capacity, increasing the longevity of the U.S. population and reducing health care costs.

(e) Licensees shall recognize their obligation to help others acquire knowledge and skill in the practice of the profession. They shall maintain the highest standards of scholarship, education and training in the accurate and full dissemination of information and ideas.

Source Note: The provisions of this §77.11 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §77.12 Prepaid Treatment Plans

(a) A licensee may accept prepayment for services planned but not yet delivered, but must provide the following:

(1) The plan must be cancellable by either party at any time for any reason without penalty of any kind to the patient.

(2) Upon cancellation of the plan the patient shall receive a complete refund of all fees paid on a pro rata basis of the number of treatments provided compared to total treatments contracted.

(3) The plan must provide for a limited, defined number of visits.

(4) The patient's file must contain the proposed treatment plan, including enumeration of all aspects of evaluation, management, and treatment planned to therapeutically benefit the patient relative to the condition determined to be present and necessitating treatment.

(A) The patient's financial file must contain documents outlining any necessary procedures for refunding unused payment amounts in the event that either the patient or the doctor discharge the other's services or therapeutic association.

(B) The treatment plan in such cases where prepayment is contracted must contain beginning and ending dates and a breakdown of the proposed treatment frequency.

(5) A contract for services and consent of treatment document must be maintained in the patient's file that specifies the condition for which the treatment plan is formulated.

(6) If nutritional products or other hard goods including braces, supports, or patient aids are to be used during the proposed treatment plan, the patient documents must state whether these items are included in the gross treatment costs or if they constitute a separate and distinct service or fee.

(b) This rule does not create any exemptions from any requirements applicable under the Texas Insurance Code.

Source Note: The provisions of this §77.12 adopted to be effective January 29, 2015, 40 TexReg 379

► RULE §77.13 Bribery

(a) A person commits a violation if they intentionally or knowingly offer, confer, or agree to confer on another, or solicit, accept, or agree to accept from another:

(1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official.

(b) It is no defense to enforcement of this violation under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:

(1) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or

(2) the public servant ceases to be a public servant.

(c) It is an exception to the application of paragraphs (1), (2), and (3) of subsection (a) that the benefit is a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code.

Source Note: The provisions of this §77.13 adopted to be effective November 24, 2015, 40 TexReg 8215

►RULE §77.14 Coercion of Public Servant or Voter

(a) A person commits a violation if by means of coercion they:

(1) influence or attempt to influence a public servant in a specific exercise of his official power or a specific performance of his official duty or influences or attempts to influence a public servant to violate the public servant's known legal duty; or

(2) influence or attempt to influence a voter not to vote or to vote in a particular manner.

(b) It is an exception to the application of subsection (a)(1) of this section that the person who influences or attempts to influence the public servant is a member of the governing body of a governmental entity, and that the action that influences or attempts to influence the public servant is an official action taken by the member of the governing body. For the purposes of this subsection, the term "official action" includes deliberations by the governing body of a governmental entity.

Source Note: The provisions of this §77.14 adopted to be effective November 24, 2015, 40 TexReg 8215

►RULE §77.15 Improper Influence

(a) A person commits a violation if they privately address a representation, entreaty, argument, or other communication to any public servant who exercises or will exercise official discretion in an adjudicatory proceeding with an intent to influence the outcome of the proceeding on the basis of considerations other than those authorized by law.

(b) For purposes of this section, "adjudicatory or official proceeding" means any proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

Source Note: The provisions of this §77.15 adopted to be effective November 24, 2015, 40 TexReg 8215

►RULE §77.16 Tampering With a Witness

(a) A person commits a violation if, with intent to influence the witness, they offer, confer, or agree to confer any benefit on a witness or prospective witness in an official proceeding, or they coerce a witness or a prospective witness in an official proceeding:

- (1) to testify falsely;
- (2) to withhold any testimony, information, document, or thing;
- (3) to elude legal process summoning him to testify or supply evidence;
- (4) to absent themselves from an official proceeding to which the witness has been legally summoned; or
- (5) to abstain from, discontinue, or delay the official proceeding of another.

(b) It is a defense to a violation under subsection (a)(5) that the benefit received was:

- (1) reasonable restitution for damages suffered by the complaining witness as a result of the violation; and
- (2) a result of an agreement negotiated with the assistance or acquiescence of an attorney for the state who represented the state in the case.

Source Note: The provisions of this §77.16 adopted to be effective November 24, 2015, 40 TexReg 8215

►RULE §77.17 Obstruction or Retaliation

(a) A person commits a violation if they intentionally or knowingly harm or threaten to harm another by an unlawful act:

(1) in retaliation for or on account of the service or status of another as a:

(A) public servant, witness, prospective witness, or informant; or

(B) person who has reported or who the actor knows intends to report the occurrence of a crime; or

(2) to prevent or delay the service of another as a:

(A) public servant, witness, prospective witness, or informant; or

(B) person who has reported or who the actor knows intends to report the occurrence of a crime.

(b) For purpose of this section, "Informant" means a person who has communicated information to the government in connection with any governmental function.

Source Note: The provisions of this §77.17 adopted to be effective November 24, 2015, 40 TexReg 8215

►RULE §78.1 Grossly Unprofessional Conduct

(a) Grossly unprofessional conduct when applied to a licensee or chiropractic, facility includes, but is not limited to the following:

- (1) maintaining unsanitary or unsafe equipment;
- (2) failing to use the word "chiropractic", "chiropractor," "Doctor, D.C.," or "Doctor of Chiropractic, D.C." in all advertising medium, including signs and letterheads;
- (3) engaging in sexual misconduct with a patient within the chiropractic/patient relationship;
- (4) exploiting patients through the fraudulent use of chiropractic services which result or are intended to result in financial gain for a licensee or a third party. The rendering of chiropractic services becomes fraudulent when the services rendered or goods or appliances sold by a chiropractor to a patient are clearly excessive to the justified needs of the patient as determined by accepted standards of the chiropractic profession;
- (5) submitting a claim for chiropractic services, goods or appliances to a patient or a third-party payer which contains charges for services not actually rendered or goods or appliances not actually sold;
- (6) failing to disclose, upon request by a patient or his or her duly authorized representative, the full amount charged for any service rendered or goods supplied.

(b) Sexual misconduct as used in subsection (a)(3) of this section means:

- (1) sexual impropriety, which may include:
 - (A) any behavior, gestures, statements, or expressions which may reasonably be interpreted as inappropriately seductive, sexually suggestive or sexually demeaning;
 - (B) inappropriate sexual comments about and to a patient or former patient including sexual comments about an individual's body or sexual comments which demonstrate a lack of respect for the patient's privacy;
 - (C) requesting unnecessary details of sexual history or sexual likes and dislikes from a patient;
 - (D) making a request to date a patient;
 - (E) initiating conversation regarding the sexual problems, preferences, or fantasies of the licensee;
 - (F) kissing or fondling of a sexual nature; or

(G) any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies but of a sexual nature; or

(2) sexual intimacy, which may include engaging in any conduct by a person or between persons that is intended to cause, is likely to cause, or may be reasonably interpreted to cause to either person stimulation of a sexual nature, such as:

(A) sexual intercourse;

(B) genital contact;

(C) oral to genital contact;

(D) genital to anal contact;

(E) oral to anal contact;

(F) oral to oral contact;

(G) touching breasts;

(H) touching genitals;

(I) encouraging another to masturbate in the presence of the licensee;

(J) masturbation by the licensee when another is present; or

(K) any bodily exposure of normally covered body parts.

(c) It is a defense to a disciplinary action under subsection (a)(3) of this section if the patient was no longer emotionally dependent on the licensee when the sexual impropriety or intimacy began, and the licensee terminated his or her professional relationship with the person more than six months before the date the sexual impropriety or intimacy occurred.

(d) It is not a defense under subsection (a)(3) of this section if the sexual impropriety or intimacy with the patient occurred:

(1) with the consent of the patient;

(2) outside professional treatment sessions; or

(3) off the premises regularly used by the licensee for the professional treatment of patients.

(e) Licensees must respect a patient's dignity at all times and should provide appropriate gowns and/or draping and private facilities for dressing and undressing.

Source Note: The provisions of this §78.1 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §78.2 Proper Diligence and Efficient Practice of Chiropractic

(a) A lack of proper diligence in the practice of chiropractic or the gross inefficient practice of chiropractic when applied to a licensee or chiropractic facility includes but is not limited to the following:

(1) failing to conform to the generally accepted standards of care within the chiropractic profession in Texas, regardless of whether or not actual injury to any person was sustained, including, but not limited to:

(A) failing to assess and evaluate a patient's status;

(B) performing or attempting to perform procedures in which the chiropractor is untrained by education or experience;

(C) delegating chiropractic functions or responsibilities to an individual lacking the ability or knowledge to perform the function or responsibility in question;

(D) causing, permitting, or allowing physical injury to a patient or impairment of the dignity or the safety of a patient;

(E) abandoning patients without reasonable cause and without giving a patient adequate notice and the opportunity to obtain the services of another chiropractor and without providing for the orderly transfer of a patient's records;

(F) failing to timely refer a patient to an appropriate health care provider when the licensee determines or should have determined that the patient may suffer from a condition:

(i) that requires a diagnosis outside the chiropractic scope of practice as authorized by Texas Occupations Code §201.002 or §78.13 of this title (relating to Scope of Practice); or

(ii) that requires treatment outside the chiropractic scope of practice as authorized by Texas Occupations Code §201.002 or §78.13 of this title; or

(G) failing to timely refer a patient to an appropriate health care provider when the licensee determines or should have reasonably determined that the patient suffers from a condition that is within the chiropractic scope of practice, but requires a diagnosis or treatment that exceeds the licensee's education, training or experience.

(2) failing to provide direct supervision of students or other persons as required by §77.5 of this title (relating to Delegation of Authority) or §74.2 of this title (relating to Registration of Chiropractic Radiologic Technologists).

(b) Conduct enumerated in subsection (a) of this section may also constitute, under appropriate circumstances, violations of other provisions of the Chiropractic Act or other board rules, including but not limited to those which prohibit grossly unprofessional conduct or dishonorable conduct.

Source Note: The provisions of this §78.2 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §78.3 Individuals with Criminal Backgrounds

(a) This section establishes guidelines and criteria on the eligibility of persons with criminal backgrounds, including each person who owns a 10% or more interest in a chiropractic facility, to obtain licenses or registrations as chiropractors, chiropractic radiologic technologists (CRTs) or chiropractic facilities.

(b) The board may suspend or revoke a current license or registration, disqualify a person from receiving a license or registration, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor that directly relates to the duties and responsibilities of a licensed chiropractor, registered CRT, or registered facility. This subsection applies to persons who are not imprisoned at the time the board considers the conviction.

(c) The board shall revoke a license or registration on the license or registration holder's imprisonment following a felony conviction or revocation of felony community supervision, parole, or mandatory supervision. A person in prison is not eligible for a license or registration.

(d) In considering whether a criminal conviction directly relates to the occupation of chiropractic, chiropractic radiology, or facility operation, the board shall consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license or registration to engage in chiropractic, chiropractic radiology, or facility operation;
- (3) the extent to which a license or registration might afford an opportunity to repeat the criminal activity in which the person had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed chiropractor, registered CRT, or licensed facility.

(e) In reaching a decision required by this section, the board shall also determine the person's fitness to perform the duties and discharge the responsibilities of a licensed chiropractor, registered CRT, or registered facility. In making this determination, the board shall consider the following factors listed in paragraphs (1) - (6) of this subsection:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the commission of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;
(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness, including letters of recommendation from:

(A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff and chief of police in the community where the person resides; and

(C) any other persons in contact with the convicted person.

(f) An applicant for a license or registration from the board including an owner with a 10% or more interest in a chiropractic facility shall disclose in writing to the board any conviction or deferred adjudication against him or her at the time of application. A current licensee or registrant, including an owner with a 10% or more interest in a chiropractic facility shall disclose in writing to the board any conviction or deferred adjudication against him or her at the time of renewal or no later than 30 days after judgment in the trial court, whichever date is earlier. The applicant for a license or registration or current licensee or facility owner shall provide certified copies of the indictment or information and the judgment of the court with this notification.

(g) Upon notification of a conviction or deferred adjudication, the board shall provide a copy of this section to the person and request that the person respond to the board as to why the board should not deny the application or take disciplinary action against the person, if already licensed or registered.

(h) A person with a conviction or deferred adjudication shall provide the response in writing to the board within 15 days after receipt of the notice of a conviction and may submit any information that he or she believes is relevant to the determinations required by this section. If the person fails to respond, the matter will be referred to the Enforcement Committee or the Licensure/Educational Standards Committee as provided in subsection (i) of this section. The person shall also:

(1) to the extent possible, secure and provide to the board the recommendations of the prosecution, law enforcement, and correctional authorities specified in subsection (e)(6) of this section;

(2) cooperate with the board by providing the information required by subsection (e) of this section, including proof, in the form indicated in subparagraphs (A) - (D) of this paragraph, that he or she has:

(A) maintained a record of steady employment, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction and/or release from imprisonment;

(B) supported his or her dependents, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction and/or release from imprisonment, and a letter from the spouse or other parent;

(C) maintained a record of good conduct as evidenced by letters of recommendation, absence of other criminal activity or documentation of community service since conviction; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted, as evidenced by certified copies of a court release or other documentation from the court system that all monies have been paid.

(i) Determinations under this section will be considered enforcement matters and made in accordance with this chapter, except that the executive director will review the application for licensure or registration of a person with a criminal conviction and refer it to the Licensure/Educational Standards Committee (LESC), upon receipt of all information required by this section. The LESC shall determine whether the applicant may sit for examination or be granted a certificate of registration or license. Upon a recommendation to deny an application by the LESC, the matter will be referred to the Executive Director for informal settlement or, if necessary, a hearing as provided by §78.8(d) of this title (relating to Complaint Procedures).

(j) The board shall notify the affected person in its order that denies, suspends, or revokes a license or registration under this section, or otherwise in writing, after hearing, of:

- (1) the reason for the suspension, revocation, denial, or disqualification;
- (2) the review procedure provided by Occupations Code, §53.052; and
- (3) the earliest date the person may appeal the action of the licensing authority.

(k) The Chiropractic Act, Occupations Code §201.302, requires that an applicant for licensure be of good moral character. Section 201.502 further authorizes the board to revoke or impose other sanctions for violations of certain specified conduct, including deception and fraud in the practice of chiropractic, conviction of a felony or a misdemeanor of moral turpitude, grossly unprofessional conduct, habitual conduct that is harmful to patients, and lack of diligence in the chiropractic profession. Chiropractors and the healthcare profession generally are held to high standards of professional conduct. To

protect the public and patients, the board has a duty to ensure that licensees and registrants are persons who possess integrity, honesty and a high standard of conduct as well as the skill, education, and training to perform their duties and responsibilities. The crimes listed in paragraphs (1) - (6) of this subsection relate to the license and registrations issued by the board. These crimes generally indicate an inability or a tendency for the person to be unable to perform or to be unfit for licensure or registration because violation of such crimes indicates a lack of integrity and respect for one's fellow human being and the community at large. The direct relationship to a board issued license or registration is obvious when the crime occurs in connection with the practice of chiropractic.

- (1) practicing chiropractic without a license and other violations of the Chiropractic Act;
- (2) deceptive business practices;
- (3) Medicare or Medicaid fraud;
- (4) a misdemeanor or felony offense involving:
 - (A) murder;
 - (B) assault;
 - (C) burglary;
 - (D) robbery;
 - (E) theft;
 - (F) sexual assault;
 - (G) injury to a child;
 - (H) injury to an elderly person;
 - (I) child abuse or neglect;
 - (J) tampering with a governmental record;
 - (K) forgery;
 - (L) perjury;
 - (M) failure to report abuse;
 - (N) bribery;
 - (O) harassment;
 - (P) insurance claim fraud, including under the Penal Code §32.55;
 - (Q) solicitation under the Penal Code §38.12(d) or Occupations Code, Chapter 102; or
 - (R) mail fraud;
- (5) delivery, possession, manufacture, or use of or the dispensing or prescribing a controlled substance, dangerous drug, or narcotic; or

(6) other misdemeanors or felonies, including violations of the Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency for the person to be unable to perform as a licensee or registrant or to be unfit for licensure or registration if action by the board will promote the intent of the Chiropractic Act, board rules including this chapter, and Occupations Code, Chapter 53.

Source Note: The provisions of this §78.3 adopted to be effective January 29, 2015, 40 TexReg 379

► RULE §78.4 Undercover Investigations

(a) Undercover investigations will be conducted only when other investigative techniques have failed or are not efficient or appropriate. Undercover investigations shall NOT be used indiscriminately.

(b) If the board investigator determines an undercover investigation is needed on a specific complaint, the investigator shall submit, to the Enforcement Committee chair and the executive director of the board, a written recommendation for an undercover investigation that will contain:

- (1) the specific complaint addressed;
- (2) the information which the investigator has determined that an undercover investigation may reveal;
- (3) the investigator's opinion regarding the relevance of the information listed in paragraphs (1) and (2) of this subsection;
- (4) the investigator's opinion regarding the reasons all previous attempts to gather the information in paragraphs (1) - (3) of this subsection by alternate techniques have not been successful or alternative techniques are not appropriate or efficient;
- (5) the undercover investigative acts that will be performed and by whom.

(c) The Enforcement Committee chair and executive director will evaluate the need and appropriateness of the recommendation and, if possible, will consult with the Enforcement Committee prior to a decision to authorize an undercover investigation.

(d) The Enforcement Committee chair and executive director will assume direct responsibility for an investigation while undercover activities are being conducted.

Source Note: The provisions of this §78.4 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §78.5 Duty to Respond to Complaint and Request for Information or Records

(a) An individual or facility regulated by the board shall cooperate with the board in its investigation of a complaint filed against the individual or facility. Upon receipt of a notice of a complaint or request for information or records from the board, an individual or facility shall respond to the complaint and any request by the board for information or records concerning the complaint. A notice of a complaint will be sent "Certified Return Receipt Requested" and must be accepted by the individual or facility or their designee. A duplicate copy of the complaint will be sent by the United States mail, and so doing raises a presumption of delivery. The original notice and the copy will be sent to the respondent's current business or mailing address on file with the board, which the respondent is required to maintain with the board by §75.1 of this title (relating to Notification and Change of Business Address), §73.1 of this title (relating to Chiropractic Facilities), or §74.2 of this title (relating to Registration of CRTs). For the purposes of this chapter and Chapter 79 of this title (relating to SOAH Proceedings), the last known address of a respondent is presumed to be the current business or mailing address on file with the board.

(b) The response to the complaint and to any request by the Board for information or records shall be in writing, sent no later than the 15th day after receipt of the notice from the board, and shall be directed to the attention of the board's Enforcement Committee.

(c) Failure to timely respond to a complaint and any request by the Board for information or records shall be an independent ground for disciplinary action by the board.

Source Note: The provisions of this §78.5 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §78.6 Required Fees and Charges

(a) Current fees required by the board are as follows:

Figure: 22 TAC §78.6(a)

SCHEDULE OF FEES

FEE DESCRIPTION	FEE
DC License – Application (includes \$50 transcript verification and online jurisprudence course)	\$200
DC License – Repeat Jurisprudence Examination	\$100
DC License – Initial (Prorated)	\$120
DC License – Renewal, On Time	\$150
DC License – Renewal, Late under 90 days	\$217.50
DC License – Renewal, Late 90 days to 1 year	\$285
DC License – Renewal, Late up to 3 years for good cause	Calculated
DC License – Reinstatement (practiced in another state)	\$145
DC License – Inactive License Processing	\$0
DC License – Reactivate from Inactive	\$150
DC License – Duplicate copy of wall certificate	\$25
DC License – Duplicate copy of pocket-sized certificate	\$10
College Faculty DC License – Application and Initial	\$75
College Faculty DC License – Renewal	\$75
Facility Registration – Application and Initial Registration	\$55
Facility Registration – Renewal, On Time	\$65
Facility Registration – Renewal, Late under 90 days	\$117
Facility Registration – Renewal, Late 90 days to 1 year	\$168
Facility Registration – Duplicate copy of wall certificate	\$25
Radiologic Technician Registration – Initial	\$35
Radiologic Technician Registration – Renewal	\$36
Radiologic Technician Registration – Renewal, Late	\$61
Continuing Education Course Annual Approval	\$100
Compliance Study Course and Test	\$175
DC License Online Jurisprudence Examination	\$150
Online Jurisprudence Continuing Education Course (Jurisprudence Study Course) – 3 hrs Continuing Education	\$55
Certification of DC license to another state board (Letter of Good Standing)	\$25
Criminal history letter fee (Declaratory Order of Eligibility)	\$150
Printed copy of statutes and rules	\$10
Returned check fee	\$25

(b) Application of Monetary Funds to Outstanding Balances. When a person pays monetary funds to the Board to renew a license or facility registration, the monetary funds paid shall first be applied to any outstanding unpaid fees, assessed costs owed by that person from a final Board order, as authorized under §79.10 of this title (relating to Decision of the Board), or administrative penalties owed from a final Board order, as authorized under §78.10 of this title (relating to Schedule of Sanctions).

(c) Any remittance submitted to the board in payment of a required fee for application, initial license, registration, or renewal, must be in the form of a cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable.

(d) Fees for license verification or certification, license replacement, and continuing education applications may submit the required fee in the form of a personal or company check, cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable. Persons who have submitted a check which has been returned, and who have not made good on that check and paid the returned check fee provided in subsection (a) of this section, within 10 days from notice from the board of the returned check, for whatever reason, shall submit all future fees in the form of a cashier's or certified check or money order.

(e) Copies of public information, not excepted from disclosure by the Texas Open Records Act, Chapter 552, Government Code, including the information listed in paragraphs (1) - (6) of this subsection may be obtained upon written request to the board, at the rates established by the Office of the Attorney General for copies of public information, 1 TAC Part 3, Chapter 70, §§70.1 - 70.10 (relating to Cost of Copies of Public Information).

- (1) List of New Licensees
- (2) Lists of Licensees
- (3) Licensee Labels
- (4) Demographic Profile
- (5) Facilities List
- (6) Facilities Labels

Source Note: The provisions of this §78.6 adopted to be effective November 25, 2015, 40 TexReg 8215; amended to be effective September 1, 2016, 41 TexReg 4011; amended to be effective November 1, 2016, 41 TexReg 7484

►RULE §78.7 Public Interest Information

(a) In order for the public to have access to the board and the board's procedures by which complaints are filed with and resolved by the board, each chiropractic facility is required to display a placard or sign furnished by the board containing the name of the board, mailing address, and telephone number for the purpose of directing complaints to the board. Each licensee practicing at a facility and each owner required to be registered with the board are equally responsible for ensuring that the public information placard and current annual registration certification are posted compliance with this section.

(b) The placard or sign shall be conspicuously and prominently displayed in a place in the facility in public view, such as the public reception area.

(c) Each licensee and registrant shall display their original current annual registration, in a prominent and conspicuous place in each facility in which the individual practices, in public view, such as the public reception area. Each chiropractic facility shall display its original current annual registration in a conspicuous and prominent place in the facility, in public view, such as the public reception area. Any reproduction of a facility registration displayed in lieu of the original is not permitted. A licensee or CRT may display a copy of his or her annual registration if he or she works in more than one facility; however, the original registration must be displayed in the facility in which the licensee or CRT provides the majority of his or her services.

Source Note: The provisions of this §78.7 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §78.8 Complaint Procedures

(a) Filing complaints. A person who has a complaint about a licensee, facility or CRT may file a complaint with the board in person at the board's office, or in any written form, including submission of a completed complaint form. The board adopts the following form in both English and Spanish as its official complaint form which shall be available from the board upon request. A complaint shall contain information necessary for the proper processing of the complaint by the board, including:

- (1) complainant's name, address and phone number;
- (2) name, address and phone number of the chiropractor, chiropractic facility, CRT or other person, firm or corporation, if known, against whom the complaint is made;
- (3) date, time and place of occurrence of alleged violation; and
- (4) complete description of incident giving rise to the complaint.

(b) Categories of complaints and investigation.

(1) The board shall distinguish between categories of complaints as follows:

(A) consumer and patient complaints against chiropractors, CRTs, or chiropractic facilities regarding alleged violations of state law, including the Texas Chiropractic Act, or board rules or orders;

(B) alleged unauthorized practice of chiropractic by unlicensed individuals, unregistered facilities or CRTs, or by a licensee, facility or CRT while a suspension order or restrictive sanction by the board is in effect;

(C) licensure, registration or reinstatement applications;

(D) alleged advertising violations by chiropractors or chiropractic facilities.

(2) The board shall prioritize complaints for purposes determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

(A) The board shall create and maintain a written list of the categories of complaints in order from the most serious to least serious violations of the Texas Chiropractic Act or administrative rules. The list shall also cite the specific rules and statutes that may have been violated, and the fines or other penalties that may be assessed.

(B) The board shall have this list available at the board office and on the board website for interested parties.

(C) The board shall use this list to set priorities for the investigation of complaints against licensees with the most serious complaints being of the highest priority.

(3) All complaints or reports of alleged violations will be investigated by the board. However, anonymous complaints may not be investigated if insufficient information is provided or the allegations are vague, appear to lack a credible or factual foundation, or cannot be proved for lack of a witness or other evidence. The executive director of the board will determine whether or not an anonymous report will be logged in as a complaint for investigation. A complaint shall not be dismissed without appropriate consideration. The board and a complainant shall be advised of a dismissal of a complaint.

(4) The board staff may initiate an investigation, including the filing of a complaint, on an individual or facility regulated by the board for compliance with the law or board rules or order.

(c) Enforcement Committee.

(1) The President shall appoint an Enforcement Committee to consider all complaints filed with the board. The Executive Director under the direction of the Enforcement Committee chair shall supervise all investigations.

(2) The Enforcement Committee shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and documents, to issue commissions to take depositions, to administer oaths and to take testimony concerning all matters within the assigned jurisdiction.

(3) The Enforcement Committee shall determine the disposition of a complaint as provided in this subsection and §78.9 and §78.10 of this title (relating to Disciplinary Guidelines and Schedule of Sanctions, respectively). The Enforcement Committee may delegate the authority to close certain complaints to the Executive Director.

(4) The Enforcement Committee may schedule an informal conference in a case in order to hear from the complainant and the respondent, in person, or if it believes a conference may facilitate the resolution of the case. A respondent, although not required, is urged to attend the informal conference. A complainant will be given notice of the conference and invited to attend. A complainant is not required to attend an informal conference.

(5) Informal conferences shall not be deemed to be meetings of the board.

(6) In a case where the Enforcement Committee has made a finding of a violation for which a sanction should be imposed, the committee may direct staff to offer an agreed order to the respondent in an effort to resolve the case informally. If an agreed order is not accepted by the respondent or no agreed order is offered, the case will be referred to the

SOAH for formal hearing. The Enforcement Committee shall present an agreed order to the board for its approval once it has been signed by the respondent. Should the board amend the proposed order, the executive director shall contact the respondent to seek concurrence. If the respondent does not concur, the Enforcement Committee shall determine whether negotiations on an agreed order should continue or to refer the case for formal hearing.

(d) Commencement of formal hearing proceedings. Board staff shall commence formal hearing proceedings by filing the case with the SOAH and by giving notice to the respondent as provided §79.2 of this title (relating to Commencement of Enforcement Proceedings).

(e) Rescission of probation.

(1) The board may at any time while an individual or facility is on probation upon majority vote rescind the probation and enforce the board's original action suspending such license or registration for violation of the terms of the probation or for other good cause as the board in its discretion may determine. Violations of probation shall be referred to the Enforcement Committee for action under this section. Probation shall not be rescinded without notice and an opportunity for a hearing on whether or not the probation has been violated.

(2) The board shall maintain a chronological and alphabetical listing of licensees, facilities, and CRTs, who have had their license or registration, suspended or revoked, and shall monitor compliance with each order. Any noncompliance observed as a result of monitoring shall be referred to the Enforcement Committee for action under this section.

(f) Reinstatement. An individual or chiropractic facility whose license or registration has been revoked for a period of more than one year may, after the expiration of at least one year from the date that such revocation became final, apply to the board, on forms provided by the board, for reinstatement. In considering the reinstatement of a revoked license or registration, the board in its discretion may:

(1) deny reinstatement; or

(2) grant reinstatement:

(A) without condition;

(B) with probation for a specified period of time under specified conditions; or

(C) with or without reexamination or additional training.

(g) Temporary suspension upon threat to public. The Enforcement Committee or the board, with a two-thirds vote, may temporarily suspend a license to practice chiropractic in the

State of Texas if the committee or the board determines from the preponderance of the evidence or information presented to it that continued practice by the licensee constitutes a continuing or imminent threat to the public welfare. The purpose of a temporary suspension is to protect the public until a preliminary hearing can be held.

(1) Such suspension may occur without notice or hearing if at the time the suspension is ordered, a hearing on whether a disciplinary proceeding should be initiated is scheduled not later than the 14th day after the date of suspension.

(A) The purpose of the 14-day hearing is to provide the licensee with notice and an opportunity to review the Board's evidence or information, to present evidence, raise defenses, and to be heard.

(B) At the 14-day hearing, the only issue presented is whether the temporary suspension should be dissolved or kept in place. If the administrative law judge finds that the Board has competent evidence or information that continued practice by the licensee constitutes a continuing or imminent threat to the public welfare, then the administrative law judge may issue an order keeping the temporary suspension in place pending the initiation of other disciplinary proceedings against the licensee.

(C) If a temporary suspension is ordered, the Board shall initiate other disciplinary proceedings within 120 days of the date of the order of temporary suspension. If criminal action is pending against the licensee, a final hearing on such disciplinary proceedings may be deferred until such time as the criminal action is finally adjudicated.

(2) A second hearing on the suspended license shall be held not later than the 60th day after the date the suspension was ordered. This 60-day hearing shall determine whether the suspension shall remain in effect pending the initiation, prosecution, and final determination of other disciplinary proceedings against the licensee. If the 60-day hearing is not held in the time required, the license is reinstated without further action of the board or committee.

(3) A hearing held under this subsection shall be conducted by the SOAH.

(4) The licensee will be notified of a suspension and any hearing scheduled under this subsection by certified mail to the address on file with the Board and by facsimile and/or email if such numbers or addresses are known to the Board. The notice sent by certified mail is legal notice under this section.

(5) The suspension shall remain in effect pending further action by the board unless an administrative law judge, the committee, or the board orders the suspension rescinded after hearing.

(6) The licensee shall not practice chiropractic during the duration of the suspension.

(7) During the suspension the enforcement and investigatory processes will continue.

(8) The licensee may waive either the 14-day or 60-day hearing or may agree that such hearings can be held beyond the statutory deadlines. The temporary suspension shall remain in effect until a hearing is held or is otherwise dissolved.

Source Note: The provisions of this §78.8 adopted to be effective January 29, 2015, 40 TexReg 379

Note: *Complaint Form* @ <http://texreg.sos.state.tx.us/fids/201500059-2.pdf> or also located @ http://www.tbce.state.tx.us/Documents/Complaint_Form.pdf

►RULE §78.9 Disciplinary Guidelines

(a) Purpose. The purpose of these guidelines is to:

(1) provide guidance and a framework of analysis for board staff, the enforcement committee and the administrative law judges to promote consistency in the making of recommendations on sanctions to the board in disciplinary cases;

(2) promote consistency in the exercise of sound discretion by the board in the imposition of sanctions in disciplinary cases; and

(3) provide guidance for the enforcement committee and other members of the board for the informal resolution of potentially contested matters.

(b) Limitations. This section shall be construed and applied so as to preserve the board's discretion in the imposition of sanctions and remedial measures pursuant to the Chiropractic Act, Occupations Code, Chapter 201. This section shall be further construed and applied so as to be consistent with the Act, and shall be limited to the extent as otherwise proscribed by statute and board rule.

(c) Board action. The board may take disciplinary action against a licensee who is found in violation of the Chiropractic Act, another state law for which disciplinary action may be taken or a rule or order of the board. A disciplinary action may be composed of any one or a combination of the following sanctions:

(1) revocation of license;

(2) suspension of license for a definite period of time;

(3) suspension with probation for a definite period of time;

(4) formal reprimand;

(5) administrative penalty;

(6) additional continuing education.

(d) Practicing without a license. A person, not a licensee, who is found to be practicing without a license in violation of the Chiropractic Act, Occupations Code, Chapter 201, shall be assessed an administrative penalty as provided by §78.10 of this title (relating to Schedule of Sanctions).

(e) Additional conditions. The Board may impose, as a condition of probation or as a term of a sanction, additional conditions or restrictions upon the license of the licensee that the Board deems necessary to facilitate the rehabilitation and education of the licensee and to protect the public, including but not limited to:

(1) completion of a specified number of continuing education hours on specified topics approved in advance by the board in addition to the minimum number required of all licensees as a condition of renewal;

(2) taking and passing with the minimum required score of an examination required by the board;

(3) restrictions on the type of treatment, treatment procedures, and/or class of patients to be treated;

(4) restrictions on the licensee's supervision of others in the practice of chiropractic;

(5) undergoing a psychological and/or medical evaluation by a qualified professional approved in advance by the board and undergoing any treatment recommended pursuant to the evaluation;

(6) regular reporting to the board as a means of monitoring the licensee's compliance with a board order.

(f) Down-time. A licensee whose license has been suspended shall not during the period of suspension realize any remuneration from his or her chiropractic practice; be in attendance in his or her office when it is open to serve patients; or provide chiropractic services to any person at any location. The licensee may arrange with another licensee to provide care and treatment to patients during the period of down-time so long as the suspended licensee does not receive any form of payment for chiropractic services rendered, including fee sharing with the treating licensee.

(g) Aggravation. The following may be considered as aggravating factors so as to merit more severe or restrictive sanction by the board:

(1) seriousness of the violation, including the nature, circumstances, extent, or gravity of the prohibited conduct and the harm or potential harm to a patient;

(2) economic harm to any individual or entity, to property or the environment;

(3) hazard or potential hazard created to the health, safety, or economic welfare of the public;

(4) attempted concealment of misconduct;

(5) premeditated conduct;

(6) intentional misconduct;

(7) disciplinary history, including prior violations of a similar or related nature;

(8) likelihood of future misconduct of a similar nature;

(9) failure to implement remedial measures to correct or alleviate harm arising from the misconduct;

(10) lack of rehabilitative potential;
(11) motive;
(12) the type of sanction, including the amount of any administrative penalty, necessary to deter future violations; and

(13) any relevant circumstances or facts increasing the seriousness of the misconduct.
(h) Extenuation and mitigation. The absence of the circumstances listed as subsection (g)(1) - (13) of this section, as well as the presence of the following factors, may be considered as extenuating and mitigating factors so as to merit less severe or less restrictive sanctions by the board:

(1) self-reported and voluntary admissions of misconduct;
(2) implementation of remedial measures to correct or mitigate harm arising from the misconduct;
(3) motive;
(4) rehabilitative potential;
(5) relevant facts and circumstances reducing the seriousness of the misconduct;
(6) relevant facts and circumstances lessening responsibility for the misconduct.

(i) The board shall consider the factors listed in subsections (g) and (h) of this section in determining the amount of an administrative penalty under §78.10 of this title (relating to Schedule of Sanctions).

(j) Upon a finding that a violation of the Act, another state law, or a rule or order of the board has occurred and that disciplinary action is warranted, the enforcement committee shall determine and recommend the type and amount of sanction in accordance with this section and §78.10 of this title.

(k) All disciplinary actions issued by the board will take the form of a board order. All disciplinary actions shall be recorded and made available upon request as public information. All disciplinary actions shall be published in the TBCE newsletter, may be released in a press release, and shall be transmitted to the Chiropractic Information Network-Board Action Data Bank (CIN-BAD) or other national data bank as required by law. Source Note: The provisions of this §78.9 adopted to be effective January 29, 2015, 40 TexReg 379

► **RULE §78.10** Schedule of Sanctions

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) APA--Administrative Procedure Act, Government Code, Chapter 2001.
- (2) Board--Texas Board of Chiropractic Examiners.
- (3) Chiropractic Act or CA--Occupations Code, Chapter 201 (formerly Texas Civil Statutes, Article 4512b).
- (4) HPCA--Health Professions Council Act, Occupations Code, Chapter 101.
- (5) HRC--Human Resources Code.
- (6) Licensee--A person who is licensed by the board to practice chiropractic in the State of Texas.
- (7) MRTCA--Medical Radiologic Technologist Certification Act, Occupations Code, Chapter 601.
- (8) Occ. Code--Occupations Code.
- (9) Respondent--An individual or facility regulated by the board against whom a complaint has been filed.
- (10) SOAH--State Office of Administrative Hearings.
- (11) DSHS--Department of State Health Services.

(b) The following table contains maximum sanctions that may be assessed for each category of violation listed in the table:

22 TAC §78.10(b)

MAXIMUM SANCTIONS TABLE

CATEGORY I. 1st Offense: \$1000* 2nd Offense: \$1000* 3rd Offense: \$1000* *and/or revocation	
VIOLATION	REFERENCE
• Practicing without a chiropractic license	22 TAC §78.9(d) CA §201.301
• Practicing with an expired license (nonrenewal due to default student loan)	22 TAC §75.2(i) CA §§201.301, 201.351, 201.354(f)
• Practicing with an expired license (nonrenewal)	22 TAC §75.2(i) CA §§201.301, 201.351, 201.354(f)
• Practicing while on inactive status	22 TAC §75.4(f) CA §§201.301, 201.311(b)(2)
• Practicing in non-compliance with continuing	22 TAC §75.6(g)

education requirements	CA §§201.301, 201.354(f)
• Improper control of patient care and treatment	22 TAC §73.4(b)
• Grossly unprofessional conduct	22 TAC §78.1 CA §201.502(a)(7)
• Lack of diligence/gross inefficient practice	22 TAC §78.2 CA §201.502(a)(18)
• Practicing outside the scope of practice	22 TAC §§78.2, 78.13; 78.15 CA §§ 201.002, 201.502(a)(1), (18)
• Performing radiologic procedures without registering, with an expired registration, or without DSHS approval; failure to renew (including non-payment of fees)	22 TAC §74.2(a), (d), (e), (h)
• MRTCA, DSHS rules or order	22 TAC §74.2(h), (j), (o)
• Performing (1) radiologic procedures without supervision, or (2) cineradiography or other restricted procedure	22 TAC §74.2(g), (k), (l), (m) (1), (2)
• Permitting a non-registered or non-DSHS approved person to perform radiologic procedures or CRT to perform procedures without supervision	22 TAC §74.2(k), (n)
• Delegating to a non- licensee authority to perform adjustments or manipulations	22 TAC §77.5(b), (f), (i), (j)
• Failure to supervise a student or recent graduate	22 TAC §77.5(c), (d)
• Delegating authority to a licensee whose license has been suspended or revoked	22 TAC §77.5(h) CA §201.5025(a)(6)(A)
• Failure to comply with the CA, other law or a board order or rule	22 TAC §78.9(c) CA §§201.501, 201.502(a)(1)
• Failure to comply with down-time restrictions	22 TAC §78.9(f)
• Medicaid fraud	CA §201.502(a)(2), (7); HRC §§36.002, 36.005
• Solicitation	Occ. Code §§102.001, 102.006 CA §201.502 (a)(21)
• Default on Student Loan	Occ. Code Chapter 56 22 TAC §77.6
• Failure to comply with requirements/restrictions on prepaid treatment plans	22 TAC §77.12
• Failure to respond to board inquiries	22 TAC §§78.3(h), 78.5
• Failure to report criminal conviction	22 TAC §78.3(f)
• Statutory violations: —Deception or fraud in practice —Presenting/using license, certificate or diploma/transcript illegally/fraudulently obtained, counterfeit/altered —Presenting untrue statement/document/testimony to pass examination —Conviction of crime of moral turpitude or felony —Procuring or assisting an abortion	CA §§201.502(a)(2) - (8), (10), (12) - (17), (19) - (20); 201.5025(a)(1)-(7); 201.5026(a)(1)-(5)

<ul style="list-style-type: none"> —Grossly unprofessional conduct or dishonorable conduct likely to deceive or defraud public —Habit of intemperance or drug addiction or other habit endangering life of patient —Directly/indirectly employing/associating with person commits unlicensed practice —Purchasing, selling, bartering, etc. a chiropractic degree, license, certificate, diploma/transcript relating to application to practice —Altering with fraudulent intent chiropractic license, certificate, or diploma —Impersonating or acting as proxy in examination —Impersonating a licensed chiropractor —Permitting a license to be used by another to practice —Proved insane —Failing to clearly differentiate a chiropractic office/clinic from another business/enterprise —Personal solicitation of patient or causing patient to be solicited by use of case history of another patient of another chiropractor —Submission of false or misleading statement, document or certificate in application for licensure —Commission of fraud/deception in taking/passing exam —Commission of unprofessional/dishonorable conduct that is likely to deceive/defraud, or injure public —Engage in conduct that subverts or attempts to subvert examination process —Directly/indirectly employs a person whose license to practice has been suspended/cancelled/revoked Associates in practice – person with license to practice has been suspended/cancelled/revoked or convicted of unlawful practice in Texas or elsewhere —Directly/indirectly aids or abets practice of chiropractic by unlicensed person —Commits an act resulting from unprofessional or dishonorable conduct that does deceive/defraud public: violates any state/federal law connected with practice, prescribes/administers a nontherapeutic treatment, violates Section 311.00025 of Health and Safety Code <ul style="list-style-type: none"> —Failure to adequately supervise activities of staff —Knowingly delegating responsibility to unqualified persons 	
<ul style="list-style-type: none"> • Impaired licensee/applicant 	22 TAC §72.4
<ul style="list-style-type: none"> • Criminal Conviction 	Occ. Code §53.021 CA §§201.502(a)(5); 201.5065 22 TAC §78.3(b), (c)
<ul style="list-style-type: none"> • Unauthorized Practice of Acupuncture 	22 TAC §78.17
<ul style="list-style-type: none"> • Permitting unlicensed person to practice 	CA §§201.502(a)(10); 201.5025(a)(7)
<ul style="list-style-type: none"> • Violation of patient confidentiality 	CA §201.402(a)

<ul style="list-style-type: none"> Practicing chiropractic while intoxicated 	CA §201.606(b)
CATEGORY II. 1st Offense: \$500 2nd Offense: \$750* 3rd Offense: \$1000* *and/or suspension	
VIOLATION	REFERENCE
<ul style="list-style-type: none"> Fail to report Out-of-Facility practice 	22 TAC §77.9
<ul style="list-style-type: none"> Operating a facility without a certificate of registration or with an expired registration 	CA §201.312 22 TAC §§73.2(a), 73.3(f), 73.4(a)
<ul style="list-style-type: none"> Practicing in a facility without a certificate of registration or with an expired registration 	CA §201.312 22 TAC §73.2(k)
<ul style="list-style-type: none"> Unauthorized disclosure of patient records 	22 TAC §77.7 CA §§201.402, 201.405
<ul style="list-style-type: none"> Over treating/overcharging a patient 	22 TAC §78.1(a)(4) HPCA §101.203
<ul style="list-style-type: none"> Publicity <ul style="list-style-type: none"> -Misleading Claims -Deception or Fraud in Practice -Advertising statement – false, tends to mislead, or deceive public 	22 TAC §§77.2, 77.4 CA §201.502(a)(2), (9), (11); HPCA §101.201
CATEGORY III. 1st Offense: \$250 2nd Offense: \$500* 3rd Offense: \$1000* *and/or suspension	
VIOLATION	REFERENCE
<ul style="list-style-type: none"> Failure to furnish patient records Overcharging for copies of patient records 	22 TAC §77.7 CA §201.405(f)
<ul style="list-style-type: none"> Failure to disclose charges to patient 	22 TAC §§78.1(a)(6), 77.3(a) HPCA §101.202
<ul style="list-style-type: none"> Failure to maintain patient records 	22 TAC §77.8
CATEGORY IV. 1st Offense: \$250 2nd Offense: \$500 3rd Offense: \$1000	
VIOLATION	REFERENCE
<ul style="list-style-type: none"> Failure to display public interest information, current facility registration or current annual license renewal 	22 TAC §78.7
<ul style="list-style-type: none"> Failure to complete CRT continuing education 	22 TAC §74.2(i)
<ul style="list-style-type: none"> Failure to comply with Spinal Screenings requirements 	22 TAC §78.17
CATEGORY V. 1st Offense: \$250 2nd Offense: \$400 3rd Offense: \$500	
VIOLATION	REFERENCE
<ul style="list-style-type: none"> Failure to report change of address 	22 TAC §75.1
<ul style="list-style-type: none"> Failure to report change of facility address/ownership 	22 TAC §73.4(c)
<ul style="list-style-type: none"> Failure to report <i>locum tenens</i> information 	22 TAC §75.2(b)
<ul style="list-style-type: none"> Use of the term "physician," "chiropractic physician" 	CA §201.502(a)(22)
<ul style="list-style-type: none"> Failure to use "chiropractor," "D.C." in advertising 	22 TAC §§77.2 (f); 78.1(a)(2)

(c) In a case where a respondent has committed multiple violations or multiple occurrences of the same violation, Board staff, the enforcement committee or an administrative law

judge may recommend and the board may impose sanctions in excess of a maximum sanction specified in the maximum sanction table provided by subsection (b) of this section, if otherwise authorized by law. For the fourth and subsequent offenses of any violation listed in the maximum sanction table with three levels of sanctions, the maximum sanction is revocation and/or \$1,000 administrative penalty.

(d) An administrative penalty may not exceed \$1,000 per day for each violation. Each day a violation continues or occurs is a separate violation for the purposes of imposing an administrative penalty.

(e) For violation of a statute which is not listed in the maximum sanction table and for which the board is authorized to take disciplinary action, the maximum sanction is revocation and/or \$1,000 administrative penalty.

Source Note: The provisions of this §78.10 adopted to be effective November 25, 2015, 40 TexReg 8216

►RULE §78.11 Disciplinary Records and Reportable Actions

(a) Information concerning licensure status for all licensees of the board is entered in a license database. The entry in the license database for a licensee who has been disciplined will be annotated that a disciplinary action has occurred. In responding to licensure status requests, the board will report whether a licensee has been disciplined by the board.

(b) The board, upon written request from a licensee, will remove such annotations from the database and its other records if the discipline imposed falls into any category listed in paragraphs (1) - (6) of this subsection. Licensees having more than one disciplinary action do not qualify for removal of the annotations.

(1) Disciplinary action in which a written reprimand or administrative penalty was issued:

(A) the effective date of the board order is at least three years past;

(B) the licensee has had no subsequent disciplinary action;

(C) the licensee has no disciplinary proceeding pending;

(D) the licensee currently is not under investigation by the board; and

(E) the order did not involve action based upon either sexual misconduct, fraud, or conviction of a criminal act.

(2) Disciplinary action in which a "suspension, all probated" order was issued:

(A) the effective date of the board order is at least seven years past;

(B) the order did not involve action based upon either sexual misconduct, fraud or conviction of a criminal act;

(C) the licensee has had no subsequent disciplinary action;

(D) the licensee has no disciplinary proceeding pending; and

(E) the licensee currently is not under investigation by the board.

(3) Disciplinary action in which an administrative penalty or written reprimand was imposed against a facility for operating a facility without a facility license or with an expired license:

(A) the effective date of the board order is at least one year past;

(B) the facility has had no subsequent disciplinary action for the same violation;

(C) the facility has no disciplinary proceeding pending; and

(D) the facility currently is not under investigation by the board.

(4) Disciplinary action in which an administrative penalty or written reprimand was imposed against a licensee for practicing with an expired license:

- (A) the effective date of the board order is at least three years past;
 - (B) the licensee has had no subsequent disciplinary action for the same violation;
 - (C) the licensee has no disciplinary proceeding pending; and
 - (D) the licensee currently is not under investigation by the board.
- (5) Disciplinary action in which a suspension order (partially or not probated) was issued:
- (A) the effective date of the board order is at least ten years past;
 - (B) the order did not involve action based upon either sexual misconduct, fraud or conviction of a criminal act;
 - (C) the licensee has had no subsequent disciplinary action;
 - (D) the licensee has no disciplinary proceeding pending; and
 - (E) the licensee currently is not under investigation by the board.
- (6) Disciplinary action in which an administrative penalty and a written reprimand were imposed against a licensee:
- (A) the effective date of the board order is at least five years past;
 - (B) the licensee has had no subsequent disciplinary action;
 - (C) the licensee has no disciplinary proceeding pending;
 - (D) the licensee currently is not under investigation by the board; and
 - (E) the order did not involve action based upon either sexual misconduct, fraud, or conviction of a criminal act.
- (c) The enforcement committee shall review a request and may ask for additional information from the licensee to evaluate the request.
- (d) Upon a determination by the enforcement committee that the licensee meets all requirements of this section, the committee shall recommend that the board either grant or deny the request. The committee shall provide its reasons to the board for the recommendation.
- (e) Should the board grant the request, the annotation of disciplinary action for a licensee and other files relating to that disciplinary action will be removed from the board's records pursuant to the board's records retention schedule.
- (f) The board will notify the licensee in writing of its decision within a reasonable period of time.
- (g) The board may remove from its records after three years from the date of closure any complaint which did not result in disciplinary action by the board as provided by the board's records retention schedule.

(h) The removal of disciplinary records under this section is within the sole discretion of the board. Its decision is final and is not subject to judicial review.

Source Note: The provisions of this §78.11 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §78.12 Peer Review Committee

(a) When investigating a complaint, the Board may consider as a mitigating factor whether a licensee has cooperated with, or established, an effective local peer review process.

(b) A chiropractic peer review process is part of an outcome-based, continuous quality improvement process that involves:

(1) the setting and periodic re-evaluation of standards for quality by which a chiropractic operation will be evaluated;

(2) the collection of data necessary to identify when those standards are not being met and data necessary to evaluate the reason(s) the deficiency occurred;

(3) an objective review of the data by an appropriate peer review committee to make recommendations for quality improvement; and

(4) an appropriate feedback mechanism to ensure that the process is operating in a manner that continually improves the quality of care provided to patients.

(c) In appointing members to peer review committees, the Board shall ensure that each member meets the following requirements:

(1) a clean disciplinary record; and

(2) an acceptable record regarding utilization review performed in accordance with the Texas Insurance Code, Article 21.58A.

(d) Each peer review committee member shall be appointed by the Board and shall serve for a term of three years. The Board may choose to reappoint peer review committee members.

(e) Peer review committee members shall fulfill the following duties:

(1) review standards of care and billing complaints;

(2) review records and evidence collected by agency staff as part of an investigation;

(3) report to the Board their findings regarding a complaint, including the applicable standard of care governing the chiropractic treatment of services provided by the chiropractor, whether the standard of care was met, and the clinical basis for the committee's finding;

(4) evaluate periodically how well peer review is working; and

(5) further cooperate with the Board and the enforcement committee in the investigation of complaints as required, including attending an informal conference or testifying at a contested case hearing.

(f) The Board shall appoint a six-member Executive Peer Review Committee to oversee and direct the activities of the local peer review committees. The Executive Peer Review Committee shall elect a presiding officer from its members.

(1) The Executive Peer Review Committee shall conduct hearings relating to disputes referred by a local peer review committee and shall make its recommendations based solely on evidence presented in the hearings.

(2) The Executive Peer Review Committee shall submit to the Board an annual report on the effectiveness of peer review and opportunities for improving peer review.

(g) The Board shall provide all peer review committee members with training in the investigation of complaints in accordance with the Chiropractic Act and the Board's rules.

Source Note: The provisions of this §78.12 adopted to be effective January 29, 2015, 40 TexReg 379

► RULE §78.13 Scope of Practice

(a) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Board--The Texas Board of Chiropractic Examiners.
- (2) CPT Codebook--The American Medical Association's annual Current Procedural Terminology Codebook (2004). The CPT Codebook has been adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services as Level I of the common procedure coding system.
- (3) Cosmetic treatment--A treatment that is primarily intended by the licensee to address the outward appearance of a patient.
- (4) Incision--A cut or a surgical wound; also, a division of the soft parts made with a knife or hot laser.
- (5) Musculoskeletal system--The system of muscles and tendons and ligaments and bones and joints and associated tissues and nerves that move the body and maintain its form.
- (6) On-site--The presence of a licensed chiropractor in the clinic, but not necessarily in the room, while a patient is undergoing an examination or treatment procedure or service.
- (7) Practice of chiropractic--The description and terms set forth under Texas Occupations Code §201.002, relating to the practice of chiropractic.
- (8) Subluxation--A lesion or dysfunction in a joint or motion segment in which alignment, movement integrity and/or physiological function are altered, although contact between joint surfaces remains intact. It is essentially a functional entity, which may influence biomechanical and neural integrity.
- (9) Subluxation complex--A neuromusculoskeletal condition that involves an aberrant relationship between two adjacent articular structures that may have functional or pathological sequelae, causing an alteration in the biomechanical and/or neuro-physiological reflections of these articular structures, their proximal structures, and/or other body systems that may be directly or indirectly affected by them.

(b) Aspects of Practice.

- (1) A person practices chiropractic if they:
 - (A) use objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; or

(B) perform nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.

(2) Needles may be used in the practice of chiropractic under standards set forth by the Board but may not be used for procedures that are incisive or surgical.

(3) This section does not apply to:

(A) a health care professional licensed under another statute of this state and acting within the scope of their license; or

(B) any other activity not regulated by state or federal law.

(c) Examination and Evaluation.

(1) In the practice of Chiropractic, licensees of this board provide necessary examination and evaluation services to:

(A) Determine the bio-mechanical condition of the spine and musculoskeletal system of the human body including, but not limited to, the following:

(i) the health and integrity of the structures of the system;

(ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;

(iii) the existence of the structural pathology, functional pathology or other abnormality of the system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology or other abnormality of the system;

(v) the etiology of said structural pathology, functional pathology or other abnormality of the system; and

(vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

(B) Determine the existence of subluxation complexes of the spine and musculoskeletal system of the human body and to evaluate their condition including, but not limited to:

(i) The nature, severity, complicating factors and effects of said subluxation complexes;

(ii) the etiology of said subluxation complexes; and

(iii) The effect of said subluxation complexes on the health of an individual patient or population of patients;

(C) Determine the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(D) Determine the treatment procedures that are contra-indicated in the therapeutic care of a patient or condition; and

(E) Differentiate a patient or condition for which chiropractic treatment is appropriate from a patient or condition that is in need of care from a medical or other class of provider.

(2) To evaluate and examine individual patients or patient populations, licensees of this board are authorized to use:

- (A) physical examinations;
- (B) diagnostic imaging;
- (C) laboratory examination;
- (D) electro-diagnostic testing, other than an incision procedure;
- (E) sonography; and
- (F) other forms of testing and measurement.

(3) Examination and evaluation services which require a license holder to obtain additional training or certification, in addition to the requirements of a basic chiropractic license, include:

(A) Performance of radiologic procedures, which are authorized under the Texas Chiropractic Act, Texas Occupations Code, Chapter 201, may be delegated to an assistant who meets the training requirements set forth under §78.1 of this title (relating to Registration of Chiropractic Radiologic Technologists).

(B) Technological Instrumented Vestibular-Ocular-Nystagmus Testing may be performed by a licensee with a diplomate in chiropractic neurology and that has successfully completed 150 hours of clinical and didactic training in the technical and professional components of the procedures as part of coursework in vestibular rehabilitation including the successful completion of a written and performance examination for vestibular specialty or certification. The professional component of these procedures may not be delegated to a technician and must be directly performed by a qualified licensee.

(d) Analysis, Diagnosis, and Other Opinions.

(1) In the practice of chiropractic, licensees may render an analysis, diagnosis, or other opinion regarding the findings of examinations and evaluations. Such opinions could include, but are not limited to, the following:

(A) An analysis, diagnosis or other opinion regarding the biomechanical condition of the spine or musculoskeletal system including, but not limited to, the following:

- (i) the health and integrity of the structures of the system;
- (ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;

(iii) the existence of structural pathology, functional pathology or other abnormality of the system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology, or other abnormality of the system;

(v) the etiology of said structural pathology, functional pathology or other abnormality of the system; and

(vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

(B) An analysis, diagnosis or other opinion regarding a subluxation complex of the spine or musculoskeletal system including, but not limited to, the following:

(i) the nature, severity, complicating factors and effects of said subluxation complex;

(ii) the etiology of said subluxation complex; and

(iii) the effect of said subluxation complex on the health of an individual patient or population of patients;

(C) An opinion regarding the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(D) An opinion regarding the likelihood of recovery of a patient or condition under an indicated course of treatment;

(E) An opinion regarding the risks associated with the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(F) An opinion regarding the risks associated with not receiving the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(G) An opinion regarding the treatment procedures that are contraindicated in the therapeutic care of a patient or condition;

(H) An opinion that a patient or condition is in need of care from a medical or other class of provider;

(I) An opinion regarding an individual's ability to perform normal job functions and activities of daily living, and the assessment of any disability or impairment;

(J) An opinion regarding the biomechanical risks to a patient, or patient population from various occupations, job duties or functions, activities of daily living, sports or athletics, or from the ergonomics of a given environment; and

(K) Other necessary or appropriate opinions consistent with the practice of chiropractic.

(e) Treatment Procedures and Services.

(1) In the practice of chiropractic, licensees recommend, perform or oversee the performance of the treatment procedures that are indicated in the therapeutic care of a patient or patient population in order to:

(A) Improve, correct, or optimize the biomechanical condition of the spine or musculoskeletal system of the human body including, but not limited to, the following:

(i) the health and integrity of the structures of the musculoskeletal system; and

(ii) the coordination, balance, efficiency, strength, conditioning, and functional health and integrity of the musculoskeletal system;

(B) Promote the healing of, recovery from, or prevent the development or deterioration of abnormalities of the biomechanical condition of the spine or musculoskeletal system of the human body including, but not limited to, the following:

(i) the structural pathology, functional pathology, or other abnormality of the musculoskeletal system;

(ii) the effects and complicating factors of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system;

(iii) the etiology of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system; and

(iv) the effect of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system on the health of an individual patient or population of patients; and

(C) Promote the healing of, recovery from, or prevent the development or deterioration of a subluxation complex of the spine or musculoskeletal system, including, but not limited to, the following:

(i) the structural pathology, functional pathology, or other abnormality of a subluxation complex;

(ii) the effects and complicating factors of any structural pathology, functional pathology, or other abnormality of a subluxation complex;

(iii) the etiology of any structural pathology, functional pathology, or other abnormality of a subluxation complex; and

(iv) the effect of any structural pathology, functional pathology, or other abnormality of a subluxation complex on the health of an individual patient or population of patients.

(2) In order to provide therapeutic care for a patient or patient population, licensees are authorized to use:

(A) osseous and soft tissue adjustment and manipulative techniques;

(B) physical and rehabilitative procedures and modalities;

(C) acupuncture and other reflex techniques;

(D) exercise therapy;

(E) patient education;

(F) advice and counsel;

(G) diet and weight control;

(H) immobilization;

(I) splinting;

(J) bracing;

(K) therapeutic lasers (non-invasive, nonincisive), with adequate training and the use of appropriate safety devices and procedures for the patient, the licensee and all other persons present during the use of the laser;

(L) durable medical goods and devices;

(M) homeopathic and botanical medicines, including vitamins, minerals; phytonutrients, antioxidants, enzymes, nutraceuticals, and glandular extracts;

(N) non-prescription drugs;

(O) referral of patients to appropriate health care providers; and

(P) other treatment procedures and services consistent with the practice of chiropractic.

Source Note: The provisions of this §78.13 adopted to be effective January 29, 2015, 40 TexReg 379; amended to be effective September 13, 2015, 40 TexReg 5787

►RULE §78.14 Acupuncture

(a) Acupuncture, and the related practices of acupressure and meridian therapy, includes methods for diagnosing and treating a patient by stimulating specific points on or within the musculoskeletal system by various means, including, but not limited to, manipulation, heat, cold, pressure, vibration, ultrasound, light electrocurrent, and short-needle insertion for the purpose of obtaining a biopositive reflex response by nerve stimulation. All therapeutic modalities provided by Doctors of Chiropractic in Texas must comply with the chiropractic scope of practice as defined by the Texas Occupations Code §201.002.

(b) In order to practice acupuncture, a licensee shall either:

(1) successfully complete at least one-hundred (100) hours training in undergraduate or post-graduate classes in the use and administration of acupuncture provided by a bona fide reputable chiropractic school or by an acupuncture school approved by the Texas State Board of Acupuncture Examiners;

(2) successfully complete either:

(A) the national standardized certification examination in acupuncture offered by the National Board of Chiropractic Examiners; or

(B) the examination offered by the National Certification Commission for Acupuncture and Oriental Medicine; or

(3) successfully complete at least one-hundred (100) hours training in the use and administration of acupuncture in a course of study approved by the board.

(c) Existing licensees that have been trained in acupuncture, that have been practicing acupuncture, and that are in good standing with the Texas Board of Chiropractic Examiners and other jurisdictions where they are licensed, may meet the requirements of subsection (b) of this section by counting each year of practice as ten hours of training in the use and administration of acupuncture.

(d) Beginning on January 1, 2010, an applicant for licensure must successfully complete either the national standardized certification examination in acupuncture offered by the National Board of Chiropractic Examiners or the examination offered by the National Certification Commission for Acupuncture and Oriental Medicine in order to practice acupuncture. This requirement will supersede the provisions of subsection (b) of this section.

Source Note: The provisions of this §78.14 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §78.15 Scope of Prohibitions

(a) The practice of chiropractic does not include:

- (1) incisive or surgical procedures;
- (2) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription; or
- (3) the use of x-ray therapy or therapy that exposes the body to radioactive materials.

(b) Aspects of Prohibition.

(1) Examination and evaluation services, and the equipment used for such services, which are outside the scope of chiropractic practice include:

- (A) incisive or surgical procedures;
- (B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;
- (C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or
- (D) other examination and evaluation services that are inconsistent with the practice of chiropractic and with the examination and evaluation services described under this subsection.

(2) Analysis, diagnosis, and other opinions regarding the findings of examinations and evaluations which are outside the scope of chiropractic include:

- (A) incisive or surgical procedures;
- (B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;
- (C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or
- (D) other analysis, diagnosis, and other opinions that are inconsistent with the practice of chiropractic and with the analysis, diagnosis, and other opinions described under this subsection.

(3) The treatment procedures and services provided by a licensee which are outside of the scope of practice include:

- (A) incisive or surgical procedures;
- (B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;
- (C) the use of x-ray therapy or therapy that exposes the body to radioactive materials;

(D) cosmetic treatments; or

(E) other treatment procedures and services that are inconsistent with the practice of chiropractic and with the treatment procedures and services described under this subsection.

(c) Questions Regarding Scope of Practice. Further questions regarding whether a service or procedure is within the scope of practice and this rule may be submitted in writing to the Board and should contain the following information:

(1) a detailed description of the service or procedure that will provide the Board with sufficient background information and detail to make an informed decision;

(2) information on the use of the service or procedure by chiropractors in Texas or in other jurisdictions; and

(3) an explanation of how the service or procedure is consistent with either:

(A) using subjective or objective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; or

(B) performing nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.

Source Note: The provisions of this §78.15 adopted to be effective January 29, 2015, 40 TexReg 379

►RULE §78.16 Cease and Desist Orders

The Board of Chiropractic Examiners delegates to its Enforcement Committee the authority to determine whether it appears that a person is engaging in an act or practice that constitutes the practice of chiropractic without a license or registration under the Chiropractic Act. After notice and opportunity for a hearing, the Enforcement Committee may issue a cease and desist order in the name of the board prohibiting the person from engaging in that activity. The Enforcement Committee may take all actions necessary and proper to carry out the Board's authority under Texas Occupations Code §201.6015, relating to cease and desist orders.

Source Note: The provisions of this §78.16 adopted to be effective January 29, 2015, 40 TexReg 379; amended to be effective November 24, 2015, 40 TexReg 8216

►RULE §78.17 Spinal Screenings

(a) The purpose of this section is to set forth the minimal standards for conducting out-of-facility spinal screenings. A licensee may offer a spinal screening outside of a registered facility only if they are in compliance with this section.

(b) At all out-of-facility spinal screenings:

(1) the booth, site or location must prominently display the name of the sponsoring facility;

(2) the sponsoring facility must have business cards with contact information readily available to the public;

(3) the licensee must possess on their person the wallet size proof of licensure;

(4) a licensee and/or clinic sponsoring a spinal screening is responsible for ensuring compliance with §77.2 of this title (relating to Publicity); and

(5) a licensee may allow or direct any staff or employee to conduct a spinal screening upon ensuring compliance with §77.5 of this title (relating to Delegation of Authority), and maintaining proof of adequate training.

(c) Any person providing chiropractic services under this section shall wear on their person a readily visible identification tag that provides the name of the person and whether the person is licensed as a chiropractor under Chapter 201, Occupations Code.

Source Note: The provisions of this §78.17 adopted to be effective September 10, 2015, 40 TexReg 5788

►RULE §79.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) ALJ--Administrative law judge.
- (2) APA--Administrative Procedure Act, Government Code, Chapter 2001.
- (3) Chiropractic Act--Occupations Code, Chapter 201 (formerly Texas Civil Statutes, Article 4512b).
- (4) Board--The Texas Board of Chiropractic Examiners.
- (5) Licensee--An individual who has been granted a license by the board to practice chiropractic in the State of Texas.
- (6) SOAH--State Office of Administrative Hearings.

Source Note: The provisions of this §79.1 adopted to be effective January 29, 2015, 40 TexReg 380

►RULE §79.2 Commencement of Enforcement Proceedings

(a) Filing with SOAH. Board staff will file a Request to Docket Case Form, as required by SOAH rules, with the SOAH for an enforcement case referred for formal hearing under §78.8(c) of this title (relating to Rules of Practice).

(b) Notice. The respondent shall be entitled to reasonable notice of a hearing of not less than ten days prior to the hearing as provided by the APA, §2001.051. The notice shall contain a citation to 1 TAC Chapter 155 (relating to SOAH Rules of Procedure) and include the matters specifically required by §2001.052, as follows:

- (1) a statement of the time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is being held;
- (3) a reference to the particular sections of the Chiropractic Act, other law or rules which the respondent is alleged to have violated; and
- (4) a short and plain statement of the acts relied on by the board as a violation of the cited law and rules.

(c) Service. The notice of hearing and the formal complaint by the board shall be served on the respondent, at the last known address of the respondent. Service on the respondent shall be complete and effective if service is by registered or certified mail and by regular mail, at the current business or mailing address of the respondent on file with board.

(d) Alternative Methods of Service. Upon agreement of the party to be notified, the Board may utilize electronic means sent to the current electronic-mail or telecopier number of the party's attorney of record or of the party if the party is not represented by counsel.

Source Note: The provisions of this §79.2 adopted to be effective January 29, 2015, 40 TexReg 380; amended to be effective November 24, 2015, 40 TexReg 8216

► RULE §79.3 Denial of Application

A person whose application for licensure or registration has been denied may ask for a hearing by filing a petition with the executive director within 30 days of notice of the denial. If the petition is not received within 30 days of the date of notice of denial, the decision is final. The petition shall set out the legal basis and supporting facts for challenging the board's decision and the relief sought by the petitioner. Upon receipt of the petition, the executive director shall file the case with the SOAH and request a hearing.

Source Note: The provisions of this §79.3 adopted to be effective January 29, 2015, 40 TexReg 380

►RULE §79.4 SOAH Hearings

(a) Hearings shall be conducted in accordance with the APA, this chapter, and SOAH rules, 1 TAC Chapter 155, by an ALJ assigned by the SOAH. Jurisdiction over a case is acquired by the SOAH when the board staff files a Request to Docket Case Form as required by SOAH rules.

(b) In an enforcement case where the board has the burden of proof, the board, through its staff, is the petitioner and the individual or facility against whom a complaint has been filed is the respondent. In a licensure or other case where the board does not have the burden of proof, the applicant shall be the petitioner, and the board, through its staff, the respondent.

Source Note: The provisions of this §79.4 adopted to be effective January 29, 2015, 40 TexReg 380

►RULE §79.5 Appearance

(a) A respondent shall enter an appearance by filing a written answer or other responsive pleading with the SOAH, with a copy to the other party, within 20 days of the date on which the notice of hearing and formal complaint or petition is served on the respondent.

(b) The failure of the respondent in an enforcement case to timely enter an appearance as provided in this section shall entitle the board to a continuance at the time of the hearing for such reasonable period of time as determined by the ALJ. The notice of hearing must contain the following language in capital letters in 10-point bold face type: FAILURE TO ENTER AN APPEARANCE BY FILING A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING TO THE FORMAL COMPLAINT WITHIN 20 DAYS OF THE DATE THIS NOTICE WAS MAILED SHALL ENTITLE THE BOARD STAFF TO A CONTINUANCE AT THE TIME OF THE HEARING.

Source Note: The provisions of this §79.5 adopted to be effective January 29, 2015, 40 TexReg 380

►RULE §79.6 Default Judgment

(a) If a respondent in an enforcement case fails to appear in person or by legal representative on the day and at the time set for hearing, regardless of whether an appearance has been entered, the ALJ, pursuant to the SOAH's rules, on the motion of the petitioner, and adequate proof that proper notice under the APA and the SOAH rules was served upon the defaulting party, shall enter a default judgment in the matter adverse to the respondent.

(b) A default judgment granted under this section will be entered on the basis of the factual allegations contained in the notice of hearing and upon proof of proper notice to the respondent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the APA, §§2001.051, 2001.052, and 2001.054. In order for a default judgment to be entered under this section, the notice of hearing shall include the following language in capital letters in 12-point boldface type: FAILURE TO APPEAR AT THE HEARING IN PERSON OR BY LEGAL REPRESENTATIVE, REGARDLESS OF WHETHER AN APPEARANCE HAS BEEN ENTERED, WILL RESULT IN THE FACTUAL ALLEGATIONS CONTAINED IN THE NOTICE OF HEARING BEING ADMITTED AS TRUE AND THE PROPOSED RELIEF REQUESTED BY BOARD STAFF SHALL BE GRANTED BY DEFAULT.

Source Note: The provisions of this §79.6 adopted to be effective January 29, 2015, 40 TexReg 380

►RULE §79.7 Depositions, Subpoenas, and Witness Expenses

(a) Upon the written request of any party, the executive director may issue a commission for a deposition or a subpoena to require the attendance of witnesses or the production of books, records, papers, or other objects as may be necessary and proper in a contested case hearing held under this chapter.

(b) If the commission or subpoena is for the attendance of a witness at a deposition or at a hearing, the written request shall contain the name, address, and title, if any, of the witness and the date upon which and the location at which the attendance of the witness is sought. If the subpoena is for the production of books, records, writings, or other tangible items, the written request shall contain a description of the item sought; the name, address, and title, if any, of the individual or entity who has custody or control over the items and the date on which and the location at which the items are sought to be produced. Each request for a subpoena, whether for a witness or for production of items, shall contain a statement of the reasons why the subpoena should be issued.

(c) Upon a finding that a party has shown good cause for the issuance of a subpoena, the executive director shall issue the subpoena in the form described in the APA, §2001.089.

(d) The executive director, with the approval of the Enforcement Committee, may issue a commission or subpoena prior to the filing of a formal complaint under §78.8(d) of this title (relating to Rules of Practice), if, in the opinion of the executive director, such a commission or subpoena is necessary to preserve evidence and testimony or to investigate any potential violation or lack of compliance with the law or board rules or orders. The commission or subpoena may be to compel the attendance of any person to appear for the purposes of giving sworn testimony and/or to compel the production of books, records, papers, or other objects.

(e) A witness who is not a party to the proceeding and who is subpoenaed to appear at a deposition or hearing or to produce books, papers, or other objects, shall be entitled to receive reimbursement for expenses incurred in complying with the commission or subpoena, as provided by either the APA, §2001.103, or the State of Texas Travel Allowance Guide for state employees issued by the comptroller of public accounts, whichever is greater.

(f) At the time, a party, other than the board, requests that a commission or subpoena be issued, the party shall submit to the board an amount of money sufficient to cover the

amount of anticipated expenses incurred in complying with the subpoena, as determined by the executive director. No subpoena or commission will be issued until such funds are deposited. The board shall pay a witness or deponent who is entitled to reimbursement under this section from the funds deposited by the party or from its own funds if the person is subpoenaed by the board, on presentation of proper vouchers sworn by the witness and approved by the board. All monies not paid out shall be returned to the party who submitted the funds for deposit.

(g) Payment of expenses under this section is governed by the APA, §2001.103.

Source Note: The provisions of this §79.7 adopted to be effective January 29, 2015, 40 TexReg 380

► RULE §79.8 Hearing Exhibits and Record

(a) Because of the often voluminous nature of the records properly received into evidence by the Administrative Law Judge (ALJ), the party introducing such documentary evidence may paginate each such exhibit or flag pertinent pages in each such exhibit in order to expedite the hearing and the decision-making process.

(b) Each hearing will be recorded by a court reporter unless the parties agree otherwise and not required by the SOAH rules. The cost of the transcription of the statement of facts shall be borne by the party requesting the transcript. The request shall be sent directly to the court reporter, with written notice to the other party of the request.

(c) A party who appeals a final decision of the board shall pay all of the costs of preparation of the original and any certified copy of the administrative record of the proceeding that is required to be transmitted to the reviewing court.

(1) The record in a contested case shall include the following listed in subparagraphs (A) - (I) of this paragraph:

(A) all pleadings filed with the board or the ALJ;

(B) all exhibits admitted by the ALJ;

(C) a statement of the matters officially noticed;

(D) questions and offers of proof, objections, and rulings thereon;

(E) the proposal for decision of the ALJ;

(F) all written rulings or orders by the ALJ;

(G) all party correspondence filed with the ALJ in connection with his or her consideration of the case;

(H) the transcribed statement of facts (Q & A testimony) from the hearing unless the parties have stipulated to all or part of the statement of facts; and

(I) the final order of the board.

(2) Calculation of costs for preparation of the administrative record is governed by the same procedure utilized by the board in preparing documents responsive to open records requests pursuant to the Public Information Act. These costs shall include the cost of research, document retrieval, copying, and labor.

Source Note: The provisions of this §79.8 adopted to be effective January 29, 2015, 40 TexReg 380

►RULE §79.9 Proposal for Decision

(a) Within a reasonable time after the conclusion of the hearing, the Administrative Law Judge (ALJ) shall prepare and serve on the parties a proposal for decision that includes the ALJ's findings of fact and conclusions of law.

(b) In the proposal for decision, the ALJ may recommend to the board as an appropriate disciplinary sanction, either the relief sought by board staff or another sanction, upon a finding of a violation in accordance with §78.9 and §78.10 of this title (relating to Disciplinary Guidelines and Sanctions, respectively). In a licensure case, the ALJ's recommendation shall be either the relief sought by the board staff, or other action in accordance with Chapter 78 of this title (relating to Rules of Practice), the Chiropractic Act or other applicable law.

(c) Any party of record who is adversely affected by the proposal for decision of the ALJ may file exceptions and a supporting brief to the proposal for decision within 15 days after the date of service of the proposal for decision. A reply to the exceptions may be filed by the other party within 15 days of the filing of exceptions. Exceptions and replies shall be filed with the ALJ, with a copy served on the opposing party.

Source Note: The provisions of this §79.9 adopted to be effective January 29, 2015, 40 TexReg 380

►RULE §79.10 Decision of the Board

(a) The board shall render the final decision in all cases, including the denial of a license or registration, revocation, temporary suspension, reprimand, and/or administrative penalties. The final order of the board shall be in writing. A party or the ALJ may submit to the board a proposed order based on the proposal for decision for consideration by the board. The board, with the advice of its legal counsel, will determine the form and content of the board's final order.

(b) The proposal for decision may be acted on by the board after the expiration of 10 business days after the filing of replies to exceptions to the proposal for decision.

(c) It is the policy of the board that it may change recommended findings of fact or conclusions of law in a proposal for decision, or vacate or modify an order issued by the ALJ when the board determines:

(1) that the ALJ did not properly apply or interpret applicable law or rules, board policies or prior administrative decisions;

(2) that a prior administrative decision of the board on which the ALJ relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(d) If the board modifies, amends, or changes a recommended finding of fact or conclusion of law, or order of the ALJ, the board's final order shall state the legal basis and the specific reasons for the change.

(e) A copy of the final order shall be mailed to all parties.

(f) The decision of the board is immediate, final and appealable upon the signing of the written order by the board where:

(1) the board finds and states in the order that an imminent peril to the public health, safety, and welfare requires immediate effect of the order; and

(2) the order states it is final and effective on the date rendered.

(g) Motions for rehearing are governed by the APA, Subchapter F. A motion for rehearing and replies to a motion shall be filed with the board, with a copy to the opposing party and the ALJ.

(h) Alternative Methods of Service. Upon agreement of the party to be notified, the Board may utilize electronic means sent to the current electronic-mail or telecopier number of the party's attorney of record or of the party if the party is not represented by counsel.

Source Note: The provisions of this §79.10 adopted to be effective January 29, 2015, 40 TexReg 380; amended to be effective November 24, 2015, 40 TexReg 8217

► RULE §79.11 Extensions of Time

The Executive Director may enter into an agreement with parties to a contested case to modify time limits as provided under the Administrative Procedure Act, Texas Government Code §2001.147.

Source Note: The provisions of this §79.11 adopted to be effective January 29, 2015, 40 TexReg 380

► RULE §80.1 Dual Office Holding

(a) Pursuant to Texas Government Code Chapter 574 (regarding Dual Office Holding), an employee of the Board who is a non-elective state officer may not accept an offer to serve in another non-elective office unless the officer obtains from the Board a finding that the officer has satisfied Article XVI, Section 40, of the Texas Constitution.

(b) The minutes of the Board meeting will include the finding that was made and any compensation that the non-elective officer is to receive from holding the additional office, including salary, bonus, or per diem payment.

Source Note: The provisions of this §80.1 adopted to be effective September 13, 2015, 40 TexReg 5788

► RULE §80.2 Merit Selection Principles

(a) Pursuant to Texas Government Code Chapter 655 (regarding Merit Selection Principles), the following principles will be effective if the Board becomes required by federal law or regulation to use a merit system of personnel administration for the Board or for a program administered under the Board.

(b) The Board shall establish policies and procedures to ensure compliance with the federal requirements; and the recruitment, selection, and advancement of highly competent Board personnel.

(c) The Board shall ensure that it:

- (1) recruits, selects, and promotes its employees according to the relative abilities, knowledge, and skills of the applicants or employees;
- (2) provides equitable and adequate compensation to an employee;
- (3) provides any employee training necessary to ensure performance of a high quality;
- (4) uses the adequacy of an employee's job performance to determine whether the employee will be retained;
- (5) treats a job applicant or employee fairly in all aspects of personnel administration;
- (6) complies fully with state and federal equal opportunity and nondiscrimination laws;
- (7) protects an employee against coercion for partisan political purposes and prohibits the employee from using employment status to interfere with or affect the result of an election or nomination for office; and
- (8) implements any additional merit principles required by federal law or regulation.

Source Note: The provisions of this §80.2 adopted to be effective September 13, 2015, 40 TexReg 5788

► RULE §80.3 Sick Leave Pool

(a) Pursuant to Government Code Chapter 661, Subchapter A (regarding Sick Leave Pool), the Board authorizes a sick leave pool program to allow a Board employee to voluntarily transfer earned sick leave to a pool for use by other employees.

(b) The executive director or designee shall administer the sick leave pool.

(c) The prescribed procedures relating to the operation of the sick leave pool will be itemized in the Board's Employee Handbook.

Source Note: The provisions of this §80.3 adopted to be effective September 13, 2015, 40 TexReg 5788

►RULE §80.4 Private Donors

(a) Pursuant to Government Code §441.006(b)(2), Government Code Chapter 575, Government Code Chapter 2255, and the General Appropriations Act, this section establishes the criteria, procedures and standards of conduct governing the relationship between the Board and its members and employees and private donors. This section authorizes the Board to accept donations it determines are in the public interest to accept, and that further its goals and programs.

(b) A private donor may make monetary or non-monetary donations, including contributions and gifts, to the Board to be spent or used for public purposes. Use by the Board of the donation must be consistent with the mission and duties of the Board. If the donor specifies the purpose of the donation, the Board should use the donation for that purpose. A donation may be accepted only if it does not influence or reasonably appear to influence, the Board or staff in the performance of official duties.

(c) On behalf of the Board, the executive director may accept donations that do not exceed \$500 in value. Donations that exceed \$500 in value must be accepted by the Board in open meeting. Acceptance of the donation by the Board will be recorded in the minutes, together with the name of the donor, description of the donation and a statement of the purpose of the donation, if any.

(d) Monetary donations must be spent in accordance with the State Appropriations Act and deposited in the state treasury unless statutorily exempted. Reimbursements for employee travel expenses or other operating expenses are not considered to be donations.

(e) The Board may document terms or conditions relating to the donation through an agreement with the donor.

Source Note: The provisions of this §80.4 adopted to be effective September 13, 2015, 40 TexReg 5788

►RULE §80.5 Contract Monitoring

(a) Contract monitoring, when applicable, is primarily conducted by the administrative staff of the Board under the authority and direction of Government Code §2261.202.

(b) The Board's chief financial officer is responsible for maintaining a record of contracts requiring enhanced contract or performance monitoring, as defined in Government Code §2261.253, for submission to the Board.

(c) The Board's chief financial officer shall immediately notify the Board or the executive director, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under subsection (c) of Government Code §2261.253.

Source Note: The provisions of this §80.5 adopted to be effective November 24, 2015, 40 TexReg 8217

► RULE §80.6 Tuition Reimbursement Payments

(a) Pursuant to Texas Government Code Chapter 656 (regarding Job Notices and Training), the Board may spend public funds as appropriate to pay the salary, tuition and other fees, travel and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student or other participant in a training or education program.

(b) An administrator or employee of the Board may seek reimbursement for a training or education program offered by an institution of higher education or private or independent institution of higher education as defined by §61.003 of the Texas Education Code. Such reimbursement shall be conditioned upon the successful completion by the administrator or employee of the program course at an accredited institution of higher education.

(c) Reimbursement tuition payments must be authorized by the Board's executive director prior to the disbursement of payment.

Source Note: The provisions of this §80.6 adopted to be effective November 24, 2015, 40 TexReg 8217